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Vincent R. Johnson

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TRIBUTE

REHNQUIST, INNSBRUCK, AND ST. MARY'S UNIVERSITY

VINCENT R. JOHNSON*

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I. ONE OF THE CHIEF JUSTICE’S SUMMER HOMES

William H. Rehnquist (1924-2005)¹ taught for St. Mary’s University School of Law² during four summers while he served as the sixteenth Chief Justice of the United States. For two weeks each July in 1991, 1994, 1998, and 2000, Rehnquist lectured on The Supreme Court in United States History³ as part of the law school’s Institute on World Legal Problems in Innsbruck, Austria. The Institute has been conducted by St. Mary’s as an annual five-week summer program at the University of Innsbruck⁴ since 1986,⁵ with

1. See generally The Supreme Court Historical Society, History of the Court, *Timeline of the Justices: William H. Rehnquist, 1972-2005*, http://www.supremecourthistory.org/02_history/subs_timeline/images_chiefs/016.html (last visited Oct. 1, 2006) (hereinafter *Rehnquist Timeline*) (discussing the life and work of Rehnquist) (on file with *St. Mary’s Law Journal*).

2. “St. Mary’s University is the oldest Catholic university in Texas and the Southwest. Its origins date to May of 1852 when members of The Society of Mary (Marianists), a Catholic religious teaching order, arrived in Texas. . . . In October 1927, the San Antonio Bar Association established the San Antonio School of Law. . . . On October 1, 1934, the San Antonio School of Law was officially transferred to St. Mary’s University.” St. Mary’s University School of Law, History of the Law School, <http://www.stmarytx.edu/law/?go=hist> (last visited Oct. 1, 2006) (on file with *St. Mary’s Law Journal*).

3. See Letter from William H. Rehnquist, Chief Justice, U.S. Supreme Court, to author (Feb. 26, 1990) (indicating that the Chief Justice would “try to show the relation of the Court’s work to contemporaneous historical events, and vice versa”) (on file with *St. Mary’s Law Journal*).

4. “The University of Innsbruck was founded in 1669 as a Catholic university under the auspices of the Jesuit Order,” as a result of “the new European political order that was shaped after the Thirty Years War.” HANS MOSER & CHRISTIAN SMEKAL, THE UNIVERSITY OF INNSBRUCK 9-10 (2001). “The close bond between the University and Church . . . increasingly came into conflict with the new age of Enlightenment. . . . By the late 1800s the University of Innsbruck had become a government institution, dependent on the State for funding.” *Id.* at 11-13. Today, there is a “quasi-dualistic arrangement, with the university as the state-run institution for learning and research on one side, and the autonomous [Austrian] Student Union as a relic of the original corporate philosophy [of a community of “teachers and learners”] on the other.” *Id.* at 13.

5. The creation of a law program in Innsbruck was unanimously approved by the St. Mary’s law faculty in 1985. See Minutes of a Special Meeting of the Faculty of the Sch. of Law (Sept. 11, 1985) (on file with *St. Mary’s Law Journal*). At that time, the law school offered no courses in international or comparative law, although courses in those fields had been taught at the home campus previously.

the generous administrative support of that university's Roman Law Institute.⁶

During my twelve years as director of the Innsbruck law program (1989-2001), I did my best to persuade Chief Justice Rehnquist to think of Innsbruck as an occasional, and hopefully regular, summer residence. In fact, I put the matter to him expressly in 1998 while we were shopping for fruit one afternoon at a store on Innrain, not far from the main building of the University of Innsbruck. I said, "Chief, I want you to think of Innsbruck as one of your summer homes."⁷ I was eager for the Chief Justice to know that he was always welcome in our program, and I wanted him to return to teach for St. Mary's as often as he could.

The proposal—that the Chief Justice think of Innsbruck not just as a short-term teaching engagement, but as a place that was special to him—was not hard to sell. Rehnquist had stated on his first trip "that [it] would not be difficult" to tempt him back to Innsbruck,⁸ and by 1998 he had already been to Innsbruck three summers with St. Mary's University. Rehnquist made no commitment in response to what I said, and I did not expect any. But the Chief Justice, I thought, was receptive to the idea. Indeed, within a few months Rehnquist had written that he "would like very much to make another appearance" in Innsbruck.⁹

6. See generally Institut für Römisches Recht, <http://www.uibk.ac.at/roemischesrecht/> (last visited Oct. 1, 2006) (on file with *St. Mary's Law Journal*).

7. This use of the term "Chief" is neither disrespectful nor overly familiar. From the time that I first met Chief Justice Rehnquist in 1988 until 1994, I addressed him in person as "Chief Justice"—an exceedingly formal appellation even for a man who was somewhat formal. In 1994, Rehnquist said to me, "Call me Chief or call me Bill." I responded, "'Chief' will be just fine." I could never have called him "Bill."

8. ST. MARY'S UNIV. SCH. OF LAW, 1990-91 ANNUAL REPORT 3 (1991) (hereinafter ST. MARY'S ANNUAL REPORT).

9. Letter from William H. Rehnquist, Chief Justice, U.S. Supreme Court, to author (Oct. 15, 1998) (discussing an invitation to teach in Innsbruck in 2000 signed "Bill Rehnquist") (on file with *St. Mary's Law Journal*).

Rehnquist, like Oliver Wendell Holmes¹⁰ and Charles Evan Hughes,¹¹ liked the great beauty of the Alps, and he delighted when an occasional summer snowfall whitened the tops of the towering Austrian summits.¹² Following the 1991 program in Innsbruck, the Chief Justice had written: "The day I returned to Washington the temperature reached 101 degrees, but I obtained some relief by closing my eyes and imagining the snow-capped peaks one sees both to the north and to the south from Innsbruck."¹³

Rehnquist enjoyed the summer concerts and the relative anonymity provided by a couple of weeks in the Austrian province of Tyrol.¹⁴ The Chief Justice also liked St. Mary's University,¹⁵ with

10. See John B. Nesbitt, *Climbing Justices: Holmes & Hughes in the Alps*, 14 SUP. CT. HIST. SOC'Y Q. No. 3, 1993, at 4, 5. Holmes's mountaineering adventure in Switzerland, which involved strenuous climbing, "occurred in 1866 at the age of 24 when . . . [he] visited Europe after his Civil War service and completion of his legal training at Harvard." *Id.* at 5. "Holmes never climbed again." *Id.* at 18. However, he "treasured his Alps experiences all of his life . . . [and] the arrival of the Justice's Alpine Club magazine filled him with delight." *Id.* at 19.

11. See John B. Nesbitt, *Climbing Justices: Holmes & Hughes in the Alps: Part Two: Charles Evans Hughes*, 14 SUP. CT. HIST. SOC'Y Q. No. 4, 1993, at 4, 4-12. Hughes made five solo trips to the Alps in the 1890s, while he was in his thirties, partially to escape the pressure of a successful law practice. *Id.* In later years he would "return to the Alps again and again in the company of his wife and children." *Id.* at 12.

12. One day, Rehnquist pointed out of the tall windows in his large Innsbruck classroom, calling his students' attention to the snowfall that had blanketed the tops of the Nordkette. On another occasion, the Chief Justice said that he could think of nowhere in the world where a major mountain range rose so dramatically from the doorstep of a city, as in Innsbruck.

13. Letter from William H. Rehnquist, Chief Justice, U.S. Supreme Court, to author (July 25, 1991) (on file with *St. Mary's Law Journal*).

14. During the Rehnquist summers in Innsbruck, at least two other American programs operated at the University of Innsbruck, one conducted by the St. Mary's University School of Business and the other (much larger) by the University of New Orleans. The participants in those programs would have been aware that the Chief Justice was in town, and some of their faculty members sat in on a few of his lectures at the law school. Once, while walking with Rehnquist along the Inn River after lunch, an American man startled us by quickly approaching and demanding of Rehnquist, "Aren't you the Chief Justice?" Rehnquist responded in a friendly but firm tone, "Yes, I am"—but then continued to walk on with no desire to widen the breach of his anonymity.

Rehnquist's visits to Innsbruck were sometimes noted in the local press. In 1994, he sat for an interview which was the basis for an article that was published with a large photo. See *Höchstrichter der USA Lehrt in Innsbruck*, TIROLER TAGESZEITUNG (Innsbruck), July 13, 1994, at 4 (reporting on Rehnquist's visit to Innsbruck to teach at the St. Mary's University School of Law summer program).

which he had been acquainted for many years.¹⁶ Rehnquist felt welcome in Innsbruck¹⁷ and had earned the St. Mary's faculty's fond regard¹⁸ and the students' admiration.¹⁹

15. When I invited Justice Ruth Bader Ginsburg to teach in Innsbruck in 1995, she wrote back that she was happy to accept "on the high recommendation of my Chief and colleagues [Justices Antonin Scalia and John Paul Stevens]." Letter from Ruth Bader Ginsburg, Justice, U.S. Supreme Court, to author (Mar. 18, 1994) (on file with *St. Mary's Law Journal*). Scalia and Stevens had taught for St. Mary's in 1992 and 1993, respectively.

16. As a young associate justice of the Supreme Court, Rehnquist had visited the home campus of St. Mary's University, in San Antonio, Texas, in the 1970s, at the invitation of James N. Castleberry, Jr., a professor on the faculty who served for many years as dean or associate dean. During that visit, Rehnquist spoke at a law school banquet. Castleberry, then associate dean, had gotten to know Rehnquist through the Phi Delta Phi program when an event was held in Boston honoring the justice.

Rehnquist also knew that David A. Schlueter had joined the St. Mary's law faculty in 1983, after serving as Legal Counsel to the Supreme Court from 1981 to 1983. Rehnquist later appointed Schlueter to be Reporter for the Advisory Committee for the Federal Rules of Criminal Procedure (1988-2005). Rehnquist had been acquainted with James M. (Jamie) Parker, Jr., a 1986 St. Mary's University law graduate, who served as Staff Counsel to the Supreme Court from 1988 to 1990. (At the Supreme Court, there are two lawyers who are employed to advise the Court on legal matters. Cf. DAVID M. O'BRIEN, *STORM CENTER: THE SUPREME COURT IN AMERICAN POLITICS* 141-42 (7th ed. 2005) (discussing the Legal Office)). Rehnquist had also published his address to the Brookings Institution's Eleventh Seminar on the Administration of Justice in the *St. Mary's Law Journal*. See generally William H. Rehnquist, Address, *Remarks of the Chief Justice*, 21 *ST. MARY'S L.J.* 5 (1989). In addition, while on leave from the St. Mary's law faculty, I served as a Supreme Court Fellow in the Office of the Administrative Assistant to Chief Justice Rehnquist in 1988-89.

17. See Letter from William H. Rehnquist, Chief Justice, U.S. Supreme Court, to author (Feb. 26, 1992) (stating "I very much enjoyed my stay in Innsbruck during the summer of 1991, and look forward to repeating it in 1994") (on file with *St. Mary's Law Journal*); Letter from William H. Rehnquist, Chief Justice, U.S. Supreme Court, to author (Apr. 29, 1999) (stating, with respect to an invitation to teach in Innsbruck in 2000, that he had agreed tentatively to participate in an American Bar Association (ABA) meeting in London, but that "[i]f I could not do both at the same time, I would probably choose Innsbruck over London") (on file with *St. Mary's Law Journal*).

18. Letter from Vincent R. Johnson, Professor of Law, St. Mary's Univ. Sch. of Law, to William H. Rehnquist, Chief Justice, U.S. Supreme Court, (Nov. 16, 1992) (stating "I cannot tell you how many times your [1991] visit [to Innsbruck] was the subject of fond reminiscence" by the faculty) (on file with *St. Mary's Law Journal*).

19. Rehnquist had detractors in other contexts. See, e.g., JOHN W. DEAN, *THE REHNQUIST CHOICE* 260, 284 (2001) (opining that Rehnquist was "extreme" and "unyielding" at the time of his appointment as associate justice and lied during his confirmation hearings); DONALD E. BOLES, *MR. JUSTICE REHNQUIST, JUDICIAL ACTIVIST: THE EARLY YEARS* 12 (1987) (noting that the ACLU "broke a fifty-two-year tradition of never opposing a nominee for public office and called publicly for Rehnquist's defeat as a 'dedicated opponent of individual liberties'"). See also Vincent R. Johnson, *The Moderate Rehnquist*, 17 *VT. L. REV.* 267, 267 (1992) (reviewing WILLIAM H. REHNQUIST, *GRAND INQUESTS* (1992) and stating that "[i]n 1986, at the time of his nomination for elevation to Chief Justice, . . .

Innsbruck is a place that naturally appeals to anyone interested in history and geography. Located in a narrow stretch of Austria in the western part of the country, Innsbruck is just north of the break in the Alps which creates the Brenner Pass to Italy, the lowest route through the great mountains which separate the Mediterranean region from central Europe.²⁰ From Innsbruck, it is only minutes by car or train to Italy (in the south) or Germany (in the north). As a place that has long been located at the intersection of trade routes and cultures,²¹ Innsbruck is a town²² wrapped in layers of history dating back at least to Roman times.²³ It was the perfect

Rehnquist was arguably the most controversial jurist in the country"). However, the Chief Justice was very well liked by those who participated in the Innsbruck program. This was partially the result of self-selection. Many study abroad programs are offered each year by American law schools. See generally Vincent R. Johnson, *Americans Abroad: International Educational Programs and Tort Liability*, 32 J.C. & U.L. 309, 309 n.1 (2006) (discussing foreign law programs). Students who did not respect or admire the Chief Justice did not pay the tuition to study in Innsbruck, and faculty members ideologically at odds with the Chief Justice did not volunteer to teach.

20. See Cynthia Russ Ramsay, *Austria: Village Idyll and Festive Towns*, in NAT'L GEOGRAPHIC SOC'Y, *THE ALPS* 172, 197-98 (Nat'l Geographic Soc'y 1973) (asserting that "Innsbruck owes its origins to the historic Brenner Pass, . . . the most important north-south trade route across the Alps . . . [w]here German kings journeyed on narrow trails to the Pope in Rome for the crown of the Holy Roman Empire"); J.M. ROBERTS, *A HISTORY OF EUROPE* 7 (1996) (indicating that the Brenner Pass is "just over 4,500 feet"). According to some, "the first olive tree on the way south marks the beginning of the Mediterranean region." *Id.* at 6.

21. See Franz Caramelle, *The Tyrolean Towns*, in FRANZ CARAMELLE, INGO SCHNEIDER & HELLA PFLANZER, *TIROL* 140 (1987) (stating that Innsbruck is "situated at a geographically significant point, the confluence of the Inn Valley and the Wipptal, two major routes even in prehistoric times"). "All the Tyrolean towns are . . . situated on important main roads, frequently at intersections or at narrow points which enabled people and goods to be inspected without difficulty." *Id.* As a result, "with one sole exception, the road and not the [public] square is the decisively determining characteristic" of towns in the Tyrol. *Id.*

22. Innsbruck, the capital of the Tyrol, is the fifth largest city in Austria (after Vienna, Graz, Linz, and Salzburg), with a population today of approximately 112,000 people, which is slightly smaller than in 1991, the time of Rehnquist's first visit. See World Gazetteer, Austria, <http://www.world-gazetteer.com/> (click "select a country or region" list; select "Austria") (last visited Sept. 30, 2006) (estimating the population in 1991, 2001, and 2006) (on file with *St. Mary's Law Journal*). However, Innsbruck feels more like a large town than a city. Set on a flat plain near the Inn River, Innsbruck is flanked by east-west mountain chains on the north and the south sides of the valley. It is easy to climb one of the foothills, see the entire town in one sweep, and think of walking the whole way across to the other side.

23. See FRANZ CARAMELLE WITH HELLA PFLANZER, *PHOTOGRAPHER, IMPRESSIONS OF INNSBRUCK* 7 (Jacqueline Schweighofer trans.) (1993) (stating that "there is evidence of unbroken continuity from Roman times" and "prehistoric artifacts" from the Bronze Age).

place for a chief justice like Rehnquist, with a deep interest in both history²⁴ and geography,²⁵ to escape the pressures of public life at the conclusion of the Supreme Court term.

24. During his time as Chief Justice, Rehnquist published four books on American history: *THE SUPREME COURT: HOW IT WAS, HOW IT IS* (1987) [hereinafter REHNQUIST *THE SUPREME COURT*]; *GRAND INQUESTS: THE HISTORIC IMPEACHMENTS OF JUSTICE SAMUEL CHASE AND PRESIDENT ANDREW JOHNSON* (1992); *ALL THE LAWS BUT ONE: CIVIL LIBERTIES IN WARTIME* (1998) [hereinafter REHNQUIST, *ALL THE LAWS*]; and *CENTENNIAL CRISIS: THE DISPUTED ELECTION OF 1876* (2004) [hereinafter REHNQUIST, *CENTENNIAL CRISIS*].

The Chief Justice once told me during a visit to his chambers that his son-in-law had chided him by saying that, as a historian, Rehnquist was merely “a popularizer.” The Chief Justice then said, “There is nothing wrong with that.” Rehnquist was interested in telling the American story and the role that law and politics played in the development of the nation. See generally Mark Tushnet, *William Rehnquist as Historian*, 91 *CORNELL L. REV.* 957, 960 (2006) (opining that Rehnquist was “a good popular historian, but not a distinguished one”).

Rehnquist’s books are thoughtful and balanced. See Johnson, *The Moderate Rehnquist*, *supra* note 19, at 274-79 (calling Rehnquist’s first two books “examples of exceptionally even-handed scholarship. . . subtly laced with humor”). The volumes abound with colorful vignettes that would make any historian proud, such as the vivid retelling of the showdown between President Franklin Delano Roosevelt and Chief Justice Charles Evans Hughes over the Court-packing plan (see REHNQUIST, *THE SUPREME COURT*, *supra*, at 226-32) and a failed attempt on the life of Supreme Court Justice Stephen Field by an estranged former judicial colleague (see REHNQUIST, *CENTENNIAL CRISIS*, *supra*, at 148-52).

Rehnquist’s books show that he had a remarkable sense for where history was heading. He published his book on the Chase and Johnson impeachments not long before he was called upon to preside over the Clinton impeachment, (see Linda Greenhouse, *The Trial of the President: The Chief Justice; Rehnquist, in New Arena, Appears at Home*, *N.Y. TIMES*, Jan. 8, 1999, at A14, available at 1999 WLNR 3068661; RICHARD A. POSNER, *AN AFFAIR OF STATE: THE INVESTIGATION, IMPEACHMENT, AND TRIAL OF PRESIDENT CLINTON* 130 (1999)), and his book about civil liberties in wartime was published just a few years before the Patriot Act, passed in response to the September 11, 2001, attacks, raised new constitutional issues dealing with that subject (see, e.g., for example, *Doe v. Gonzales*, 126 S. Ct. 1 (2005) (Ginsburg, J., sitting as a single justice, declining to grant a stay of an allegedly unconstitutional prior restraint)). Rehnquist’s book on the disputed election of 1876 first appeared in print in 2004, a few years after he presided over *Bush v. Gore* (531 U.S. 98 (2000)). During an interview, the Chief Justice said that the book was “three years in the writing.” *Q&A; Rehnquist’s Book on a Disputed Election (No, Not That One)*, *N.Y. TIMES*, Mar. 6, 2004, at B11, available at 2004 WLNR 5532858. However, if I recall correctly, Rehnquist told me about the topic for the book before the cliff-hanging presidential election of 2000. He later speculated that if he did a fifth book it might be “a cartoon history of the court.” *Id.* at B11.

History had impressed Rehnquist as a boy. As I stood with him on Maria-Theresien-Strasse in Innsbruck one summer, looking at the Baroque Annasäule (St. Anne’s column), commemorating the Bavarian incursion of 1703, the Chief Justice remarked that he thought that scene had been pictured in one of his history books in secondary or elementary school as an illustration of Austria.

During Rehnquist's nineteen-year tenure as Chief Justice (1986-2005),²⁶ the Court's judicial year finished annually right at the end of June,²⁷ just prior to the start of the St. Mary's program in Innsbruck in early July. After a pressured period of work in Washington, D.C., in May and June, arriving at decisions in pending cases, writing opinions, and generally clearing the docket amidst the glare of media attention, Innsbruck was the perfect place to retreat.

Rehnquist had a cottage in Vermont where he liked to go in the summers,²⁸ and for a while he also had a place in West Virginia.²⁹ However, I think that at least by the summer of 2000, when the

25. In Innsbruck, Chief Justice Rehnquist recounted that he had developed a deep interest in geography as a boy when he was confined to bed with an illness. He said that he was given an atlas, and that he studied the maps for hour upon hour. In his chambers at the Supreme Court, the most distinctive item was a large world globe. Not surprisingly, in his official portrait, now hanging in the West Conference Room of the Supreme Court Building, Rehnquist appears seated beside a globe in a dramatic pose unlike any of the official portraits of the fifteen prior chief justices.

In 1998, I had just finished serving as a Fulbright Senior Scholar in China at Renmin (People's) University in Beijing. I recall sitting with the Chief Justice and faculty colleagues at lunch one day that July in Hall (near Innsbruck), poring over a map of China and discussing the different cities with Rehnquist.

26. See Members of the Supreme Court of the United States, <http://www.supremecourtus.gov/about/members.pdf> (last visited Oct. 3, 2006) (informing that Rehnquist had served fourteen years as an associate justice, before being elevated to the center seat, making his total tenure at the Supreme Court thirty-three years) (on file with *St. Mary's Law Journal*).

27. See Visitor's Guide to Oral Argument at the Supreme Court of the United States, <http://www.supremecourtus.gov/visiting/visitorsguidetooralargument.pdf> (last visited Oct. 3, 2006) (stating that "all cases argued during a term of Court are decided before the summer recess begins, usually by the end of June") (On file with *St. Mary's Law Journal*). Cf. O'BRIEN, *supra* note 16, at 143-44 (discussing the Court's calendar); Greenhouse, *supra* note 24, at A14 (stating that "by the Fourth of July the docket is clear").

28. See Letter from William H. Rehnquist, Chief Justice, U.S. Supreme Court, to author (July 20, 1994) (stating that he had enjoyed his "stint" in Austria and a subsequent trip to Bulgaria in early July, and was "now safely back in Washington, cleaning up [his] desk and getting ready to leave for Vermont") (on file with *St. Mary's Law Journal*); see also Morton M. Kondracke, ROLL CALL (U.S.A.), Sept. 6, 2005, available at 2005 WLNR 14007867 (stating that Vermont "served as a special refuge for the Chief Justice and his family over the years"); *Hail to the Chief: Senate Hustles to Get Roberts Sworn in to High Court*, GRAND RAPIDS PRESS, Sept. 29, 2005, at A3, available at 2005 WLNR 15361655 (noting that "Stephen Breyer took his oath in 1994 on the front porch of the late Chief Justice William Rehnquist's cottage in Vermont").

29. See Sandra Day O'Connor, *Remembering Rehnquist*, 31 J. SUP. CT. HIST. 5, 7 (2006) (stating that when living in Northern Virginia, the Rehnquists "acquired a cabin not far from Berkeley Spring in West Virginia"). The Chief Justice said that he did not keep the cabin long after his wife's death because he did not want to go there to "sit on the porch by [himself]."

Chief Justice was accompanied to Austria for part of his stay by his daughter Janet and two young granddaughters, William H. Rehnquist did indeed think of Innsbruck as an occasional summer home. At the invitation of my colleague Geary Reamey,³⁰ the Chief Justice in fact committed to a fifth summer with St. Mary's in Innsbruck in 2003, but the infirmities of age intervened.

This essay gathers together memories, very good memories, of the summers my colleagues and I spent with Chief Justice Rehnquist in Austria. Many of those recollections are shared by the faculty members, students, and guests who participated in the Innsbruck program during the years when the Chief Justice headlined the faculty as the "Distinguished Visiting Jurist." Those various memories are a special part of the history of St. Mary's University School of Law.

These reminiscences offer an extra-judicial perspective on Chief Justice Rehnquist. In Innsbruck, we never talked about anything that could (or had, during Rehnquist's time) come before the Supreme Court. We discussed history, music, languages, legal education, his service in the military, and all sorts of topics that were simply good, polite conversation. This was easy for Rehnquist, whose intellect spanned a wide cultural range.³¹ When the Chief Justice came to Innsbruck, he seemed to be able to leave his job in Washington, D.C., largely behind, much more so than many contemporary business travelers.³² Those of us on the faculty allowed

30. Reamey and I conceived the idea for the Innsbruck program at lunch with his wife, Kay L. Reamey '88, in May 1985, as we marked our promotions from assistant to associate professors. Over the years, Reamey taught more frequently on the Innsbruck faculty than anyone else. During my years as director of the Institute on World Legal Problems, Reamey served as associate director. In 2001, he succeeded me as director of the Innsbruck program.

31. Noel J. Augustyn, *The Chief I Knew*, 31 J. SUP. CT. HIST. 9, 13 (2006) (venturing that "Bill Rehnquist could very well have been the most cultured member of his Court. His knowledge of history, art, even the names of mountain peaks and varieties of pear trees was encyclopedic").

32. If Rehnquist brought work with him to the Tyrol, I was unaware of it. He did not arrive with luggage that could have contained much paperwork, nor to my knowledge were packages shipped to him at the University of Innsbruck or his hotel. E-mail was not widely used during the Chief Justice's first two summers in Austria, and even during his last two visits I doubt that he touched a keyboard. It seems likely that Rehnquist received some faxes at his hotel, but, based on random comments of the small hotel's staff, I don't think there were many. All this seems consistent with what the Chief Justice's son, James C. Rehnquist, said at his father's funeral, "[N]o one smelled more roses than my dad." Todd S. Purdum, *Eulogies for Rehnquist Recall a Man of Many Interests*, Sept. 8, 2005, N.Y.

the Chief Justice to do that.³³ We dined and traveled with Rehnquist when he was essentially “off duty.” Consequently, this essay offers a perspective on Chief Justice William H. Rehnquist as a teacher, a guest, and a traveler, rather than Rehnquist as a lawyer, a jurist, or a scholar.

II. THE GREAT UNCERTAINTY

In June 1989, I was nearing the end of my year at the Supreme Court, where I had served as a Supreme Court Fellow.³⁴ Working in the Office of the Administrative Assistant to the Chief Justice,³⁵

TIMES, at A20, available at 2005 WLNR 14119452; see also the text accompanying note 123 *infra* (discussing the Chief Justice’s preference for non-legal reading material while vacationing at Innsbruck).

With Rehnquist, as with other Supreme Court justices who taught for St. Mary’s in Innsbruck, it was sometimes necessary to make sure that he was available at his hotel at a certain point in the late evening for the grim business of voting by telephone on death-penalty appeals requiring prompt action.

33. See also *infra* note 40 (discussing ethical issues relating to recusal).

34. See generally The Supreme Court Fellows Program, <http://www.fellows.supremecourtus.gov/index.html> (last visited Sept. 26, 2006). The program was initially called the Judicial Fellows Program. See also Vincent R. Johnson, *Justice Tom C. Clark’s Legacy in the Field of Legal Ethics*, 29 J. LEGAL PROF. 33, 35 n.10 (2004-05) (discussing the roles of Chief Justice Warren Burger and Justice Tom Clark in the creation of the Judicial Fellows Program). When Chief Justice Rehnquist later appointed me to two terms on the Commission of the Judicial Fellows Program (1993-1999), I suggested that the Commission rename the enterprise the Supreme Court Fellows Program. My thought was that the term “Judicial Fellow” was too vague and failed to reflect the program’s connection to the Supreme Court. The White House Fellows program places one fellow each year at the White House and many more throughout the various departments and agencies of the Executive Branch. It made sense to me that the judicial branch fellowship program, which now places one fellow at the Supreme Court and three others at the United States Sentencing Commission, the Administrative Office of the United States Courts, and the Federal Judicial Center, should, as a matter of co-equal branch parity, be called the Supreme Court Fellows Program. When the name change was being discussed, one possibility was to rename the former Judicial Fellows Program, the Supreme Court Judicial Fellows Program. At a dinner at the Supreme Court, when Justice Antonin Scalia heard of that idea, he told me that such a change was clumsy and made no sense. He said the “Judicial” was implied: there would never be a “Supreme Court *Non-Judicial* Fellows Program.” The annual brochures promoting the program show that the new name, “Supreme Court Fellows Program,” was publicized when applicants were being recruited for the 2003-04 year.

35. “Over eighty statutes confer [on the chief justice] additional administrative duties” beyond the usual responsibilities of a justice relating to cases. O’BRIEN, *supra* note 16, at 149. To assist the Chief Justice, Congress created the position of Administrative Assistant to the Chief Justice. *Id.* at 150. The Administrative Assistant “gradually became the Court’s chief executive officer.” *Id.* at 151.

Noel J. Augustyn, I assisted the Chief Justice with special projects (e.g., his year-end report about the state of the federal courts³⁶ and his testimony before Congress about the need to increase the salaries of federal judges),³⁷ but more importantly, with his speeches.³⁸ As a relatively new Chief Justice, Rehnquist was then giving a major address at a law school or other venue about once every three or four weeks. The Chief Justice spoke almost exclusively about historical topics,³⁹ matters unlikely to result in litigation.⁴⁰ I did

36. See William H. Rehnquist, 1988 Year End Report on the Judiciary, in *SELECTED SPEECHES AND ARTICLES OF WILLIAM H. REHNQUIST*, 1989, at vol. 7, tab 98A (*available at the Sarita Kenedy East Law Library, St. Mary's University, San Antonio, Texas*) (collecting and indexing more than one hundred speeches and articles by Rehnquist between 1957 and 1989) [hereinafter *SELECTED SPEECHES*].

37. See William H. Rehnquist, Remarks of the Chief Justice Before the Post Office and Civil Service Committee (May 3, 1989), in *SELECTED SPEECHES*, at vol. 7, tab 104.

38. As the Fellow assigned to the Supreme Court, I also assisted the Curator's Office by doing more than forty briefings for visiting foreign dignitaries.

39. For example, during my year at the Court, I worked on historical speeches given by the Chief Justice relating to: judicial selection for constitutional courts; judicial independence; the 125th anniversary of the Gettysburg Address; the 200th anniversary of the U.S. Marshals Service; the Office of the Solicitor General; the 200th anniversary of the Judiciary Act of 1789; separation of powers; Rehnquist's early legal career; the fiftieth anniversary of the appointment of William O. Douglas, and "Daniel Webster and the Oratorical Tradition." See *SELECTED SPEECHES*, *supra* note 36, at vol. 7, tabs 93-106. The notable exception that year to the Chief Justice's unwillingness to address contemporary topics was his address to a conference sponsored by the Brookings Institution, which advocated reforming in-state-plaintiff diversity jurisdiction and civil RICO actions. William H. Rehnquist, *Remarks of the Chief Justice*, 21 *ST. MARY'S L.J.* 5, 7-13 (1989).

40. Presumably, the Chief Justice was concerned about the issue of recusal. Cf. Jeffrey W. Stempel, *Rehnquist, Recusal, and Reform*, 53 *BROOK. L. REV.* 589, 590 (1987) (asserting that "the most serious threat" to Rehnquist's nomination to be Chief Justice related to failure to recuse himself from an earlier case). Ethics rules generally provide that a judge should step aside from any case in which the judge's "impartiality might reasonably be questioned." MODEL CODE OF JUDICIAL CONDUCT Canon 3(E)(1) (2000). Such issues may arise as a result of prior discussions about justiciable issues. *But see* *McBeth v. Nissan Motor Corp. U.S.A.*, 921 F. Supp. 1473, 1481 (D.S.C. 1996) (stating that "[a] judge's remarks made outside of court do not provide a basis for recusal unless the movant shows actual bias against the particular party involved"). At one time, ethics codes prohibited "judges and judicial candidates from expressing opinions 'on any issue that may be subject to judicial interpretation by the office which is being sought or held.'" Vincent R. Johnson, *Ethical Campaigning for the Judiciary*, 29 *TEX. TECH L. REV.* 811, 832 (1998). The Supreme Court has recently relaxed those standards. See *Republican Party of Minn. v. White*, 536 U.S. 765, 788 (2002) (holding that a canon of ethics that prohibited candidates for judicial election from announcing their views on disputed legal or political issues violated the First Amendment).

historical research relating to those talks,⁴¹ roughed out drafts of the speeches,⁴² and then helped Augustyn and his assistant, Vanessa Yarnall, with final editing of the text of the speeches after the Chief Justice had revised or rewritten the drafts.⁴³

At roughly the same time, a new dean, Barbara Bader Aldave, was appointed to head St. Mary's University School of Law, effective June 1, 1989. I planned to return to the St. Mary's faculty, and one of Dean Aldave's first decisions was to appoint me director of the St. Mary's program in Innsbruck, a venture that I had co-founded with Geary Reamey a few years earlier under Dean James N. Castleberry, Jr.

I knew that if I could bring members of the Supreme Court to teach in Innsbruck I could make the program a success.⁴⁴ A justice on the faculty would attract a large number of students from across

41. One assignment was a simple question that the Chief Justice asked in preparation for his trip to Paris to participate in the celebration of the French Bicentennial. He wanted to know, "What were the French courts doing during the Reign of Terror?" It took me about a month to research that issue. I provided the Chief Justice with a comprehensive memo and then used the surplus research as the basis for an article which notes a "debt of gratitude" to the Chief Justice for focusing my "attention on the relationship of the French Revolution to the American constitutional tradition." Vincent Robert Johnson, *The Declaration of the Rights of Man and of Citizens of 1789, the Reign of Terror, and the Revolutionary Tribunal of Paris*, 13 B.C. INT'L & COMP. L. REV. 1 n.* (1990).

42. Sometimes the Chief Justice provided very clear instructions. For example, when I worked on a speech about the eloquence of Abraham Lincoln, Rehnquist furnished a list of major speeches by Lincoln which should be taken into account: the House Divided Speech; the Cooper Union Address; the Lincoln-Douglas debates; the Second Inaugural; the Gettysburg Address; etc. Lincoln was Rehnquist's "favorite former president." O'Connor, *supra* note 29, at 7.

43. One does not lightly edit the final draft of a Chief Justice. However, one speech came back to us from Rehnquist's chambers with a new sentence which read, "Judicial reform is no sport for the stout-minded." We had no idea what that meant. Reluctantly, Augustyn, Vanessa Yarnall, and I agreed that we had to question the wording. We ultimately learned that the Chief Justice's staff had mistranscribed Rehnquist's penciled notations. The sentence was supposed to read, "Judicial reform is no sport for the short-winded." It was good that we raised that question before the speech was released to the press.

44. The idea of American Supreme Court Justices teaching abroad was much less common in the late 1980s than it is today. In recent years, Justices Anthony Kennedy, Sandra Day O'Connor, Antonin Scalia, and Ruth Bader Ginsburg have become true globetrotters teaching American law students in foreign venues and spreading the Rule of Law in other countries. For example, Justice Kennedy recently appeared by video at the dedication of a new Chinese law school. Cf. Vincent R. Johnson & Brian T. Bagley, *Fighting Epidemics with Information and Laws: The Case of SARS in China*, 24 PENN ST. INT'L L. REV. 157, 158 n.6 (2005) (discussing Soochow University). In 1988, the only precedent I was aware of for justices teaching abroad related to Professor Paul Baier of Louisiana

the United States and could serve as the centerpiece for a broad array of courses.⁴⁵ The program, as I envisioned it, would focus on contemporary legal issues with global significance; hence the name “Institute on World Legal Problems.” The courses would include subjects such as human rights law, international criminal activity, law and international terrorism, international business transactions, transnational environment problems, and international art theft.⁴⁶ However, a member of the Supreme Court would not have to teach an international or comparative law subject to be an asset to the program. I reasoned that a justice should be welcome to teach whatever he or she pleased on the theory that the choice would undoubtedly be a valuable addition to the legal education of American and other students studying in Innsbruck.⁴⁷

State University (LSU), a former Supreme Court Fellow, who had invited Justice Blackmun to teach for LSU in Europe.

45. The plan worked as anticipated. Between 1990 and 2001, students from more than ninety American law schools, as well as a small number of students from Austria, Italy, Germany, Hungary, and Russia, participated in the St. Mary’s Innsbruck law program. The enrollment averaged seventy to one hundred students per summer, with a majority coming from law schools other than St. Mary’s. The summer faculties during those years included more than forty visiting professors from a broad range of law schools in the United States (Boalt Hall, Brooklyn, Cardozo, Catholic, DePaul, Florida State, Fordham, George Washington, Georgetown, Georgia, Harvard, Iowa, John Marshall (Chicago), Loyola (Chicago), Michigan, Minnesota, New York, Northwestern, Roger Williams, Seattle, Southwestern, Texas, Vermont, Washington in St. Louis, and Yale) and foreign universities (Central European (Hungary), Innsbruck (Austria), Renmin (China), St. Petersburg State (Russia), Shandong (China), and Vienna (Austria)). There were also guest lecturers from Germany, France, Italy, Sweden, the United Kingdom, and the United States.

During its first four summers of operation (1986-89), the Innsbruck law program had been a small but solid program with an average enrollment of less than thirty students and one or two visiting professors each year.

46. Other courses that were offered between 1990 and 2001 included: Comparative Contract Law; Comparative Immigration Law and Policy; Comparative Land Use Planning; Comparative Tort Law; Death Penalty and International Law; European Union Law and Policy; Human Rights, War, & Sovereignty; Immigration and Nationality Law; International and Comparative Women’s Rights; International Energy Transactions; International Environmental Crimes; International Organizations; International Law of the Sea; International Taxation; International Telecommunications Law; Internationalization of the Legal Profession; Introduction to the Chinese Legal System; Law and Economics of International Trade; Law of War, Peace, & Neutrality; Lawyering Abroad: Basic Concepts of European Legal Systems; Mass Litigation in the European Union; Mediation in the International Setting; National Security Law; Population Law and Policy; Private International Law; Transnational Labor and Employment Law; World Hunger and International Law; and World Legal History.

47. The other justices who taught in Innsbruck while I was director of the program varied widely in their choice of topics. In 1992, Justice Antonin Scalia lectured on “The

During my year at the Supreme Court, I had met all nine justices, but by far my best connection was to the Chief Justice. However, that was a formal relationship. I worked for Rehnquist through his Administrative Assistant, Augustyn, whom I thought of as essentially the third-branch equivalent to the White House chief of staff.⁴⁸ I had talked with the Chief Justice personally perhaps only a half-dozen times during the year, and those conversations were generally brief.⁴⁹ Nevertheless, I drew up a letter to the Chief Justice, inviting him to teach for St. Mary's at the University of Innsbruck. I do not remember whether I delivered the letter personally to the Chief Justice's chambers or routed it through Augustyn.

Supreme Court: History, Politics, and Separation of Powers." In 1993, Justice John Paul Stevens conducted classes on (1) the Commerce Clause, with particular emphasis on *Gibbons v. Ogden*, and (2) the Bill of Rights, with particular emphasis on the incorporation doctrine, as part of a course entitled "Constitutional Issues: Incorporation and Commerce." In 1995, Justice Ruth Bader Ginsburg gave three general interest lectures relating to procedure and constitutional law, including one lecture on women in the legal profession. (Justice Ginsburg's husband, Martin, a Georgetown law professor, also taught a one-credit course called "Selected Issues in the Taxation of Income." Interestingly, Professor Ginsburg sat through all of Justice Ginsburg's lectures, and vice versa.) In 2001, Justice Sandra Day O'Connor lectured about constitution making in Central and Eastern Europe and international transgressions and conflicts as part of a course on "Promoting the Rule of Law."

In total, between 1990 and 2001, members of the Supreme Court taught in Innsbruck eight times. In retrospect, that successful lineup looks somewhat inevitable. In reality, there were many uncertainties in the early years. The first justice who was supposed to teach in Innsbruck was William J. Brennan, Jr. He and I had agreed to co-teach a course called "Comparative Libel Law" as part of the 1990 program. In spring of that year, Justice Brennan fell ill and was forced to withdraw from all speaking engagements. Laurence Tribe, a constitutional law professor at Harvard Law, substituted for Brennan. On another occasion, a justice who had agreed to teach one year decided that he needed to change to a different year. And then a justice who had previously declined an invitation decided to teach during the year when the new vacancy arose.

48. See *supra* note 35 (noting the creation of the position entitled Administrative Assistant to the Chief Justice).

49. Like other Supreme Court Fellows, I had been selected for that position not by the Chief Justice, but by the program's Commission, with ultimate approval by the Chief Justice. The Commission often includes a former ABA president, prominent state or federal judges, one or two law professors or deans, representatives of the various "agencies" (the Supreme Court, the Federal Judicial Center, the Administrative Office of the United States Courts, and the United States Sentencing Commission), and occasionally a former White House Counsel or former member of the cabinet. According to Rehnquist's first Administrative Assistant, "[i]n considering candidates for the Judicial Fellow position at the Court," the Chief Justice said, "I don't see these positions as rewards for people who think the same way I do." Augustyn, *supra* note 31, at 12.

I was not surprised to receive a quick response. Rehnquist was known for being decisive. He did not dally in making decisions about which his mind was clear. Soon after the letter was sent, I saw the Chief Justice in person at my “farewell party” shortly before I left the Court to return to San Antonio. Rehnquist told me that the uncertain health of his wife, Natalie “Nan” Cornell Rehnquist,⁵⁰ who had previously been ill with cancer, did not permit him to accept St. Mary’s invitation at that time. He said that if his wife’s condition improved, we could later make plans for him to teach in Innsbruck. He said that he would get back to me.

The next time I saw the Chief Justice was at the Supreme Court Fellows Program’s annual reception at the Supreme Court in January 1990. Rehnquist called me over to the side of the Lower Great Hall and said that Mrs. Rehnquist’s health had improved to the point that St. Mary’s could plan on both of them coming to Innsbruck in the summer of 1991. However, the Chief Justice made clear that if Mrs. Rehnquist had a relapse and was unable to travel to Innsbruck, he could not do so either. I understood that those were the terms of the deal, and they were of course acceptable to me. Indeed, I was happy that the Chief Justice would conditionally join the Innsbruck summer faculty. I called Dean Aldave that evening to share the good news with her. Notwithstanding the fact that Aldave is a “liberal’s liberal” and that Rehnquist was a “conservative’s conservative,” Dean Aldave was very pleased.⁵¹

In retrospect, St. Mary’s was fortunate that the Chief Justice made his tentative commitment when he did. Mrs. Rehnquist soon “had a recurrence of her illness,”⁵² which, in the Chief Justice’s words, made the “condition of her health in the summer of 1991 even more of an imponderable than previously.”⁵³ But Rehnquist was willing to persevere with the plan. He wrote that despite the unwanted health developments, “we are quite ready to go ahead

50. Following his clerkship at the Supreme Court of the United States for Justice Robert Jackson, Rehnquist married Natalie Cornell in 1953. *Rehnquist Timeline*, *supra* note 1.

51. See Letter from Barbara Bader Aldave, Dean, St. Mary’s Univ. Sch. of Law, to William H. Rehnquist, Chief Justice, U.S. Supreme Court (Feb. 5, 1990) (stating that “[a]ll of us who plan to be in Innsbruck during July 1991 are truly delighted by the prospect of your joining us there”) (on file with *St. Mary’s Law Journal*).

52. Letter from William H. Rehnquist, Chief Justice, U.S. Supreme Court, to author (Feb. 26, 1990) (on file with *St. Mary’s Law Journal*).

53. *Id.*

and commit ourselves so long as you know that if she is unable to come, I, too, will be unable to come.”⁵⁴ He said he would keep me advised and concluded optimistically, “I shall look forward to participating in the St. Mary’s program at Innsbruck during the summer of 1991.”⁵⁵

Throughout the 1990-91 academic year, St. Mary’s University School of Law extensively publicized the fact that Chief Justice Rehnquist would headline the 1991 Innsbruck program. Posters featuring that announcement were sent to every ABA-approved law school in the United States, and hundreds of program brochures highlighting the Chief Justice’s planned course were mailed to law students inquiring about the program. As anticipated, a large group of students from across the United States enrolled in the 1991 Institute on World Legal Problems, and all of those students signed up for the Chief Justice’s course. The students had been advised that the Chief Justice’s participation was contingent on Mrs. Rehnquist’s health.

My correspondence with the Chief Justice continued to reflect uncertainty about Mrs. Rehnquist’s condition and about whether the Chief Justice would be able to teach in Innsbruck.⁵⁶ In late May, Rehnquist said that he and his wife could both come to Austria.⁵⁷ However, in June, there was some indication that Mrs. Rehnquist’s health was declining. The Chief Justice advised me of

54. *Id.*

55. *Id.*

56. See Letter from William H. Rehnquist, Chief Justice, U.S. Supreme Court, to author (Oct. 15, 1990) (stating “[w]e simply will not know until much closer to the scheduled date whether . . . [Mrs. Rehnquist] will be able to travel that far, and for how long a period of time. I can understand that this uncertainty may be inimical to the best interest of St. Mary’s summer program, and should you wish to seek out someone else I would entirely understand”) (on file with *St. Mary’s Law Journal*); Letter from William H. Rehnquist, Chief Justice, U.S. Supreme Court, to author (May 1, 1991) (stating Rehnquist’s “present inclination is to go myself even . . . [if Mrs. Rehnquist] is able to come for only a part of the time”) (on file with *St. Mary’s Law Journal*); Letter from Peter McLean, Peter T. McLean, Ltd., to author (May 14, 1991) (indicating that a staff member in the Chief Justice’s chambers was “not at all sure” if Mrs. Rehnquist would be able to travel) (on file with *St. Mary’s Law Journal*).

57. See Letter from Vincent R. Johnson, Professor of Law, St. Mary’s Univ. Sch. of Law, to Fritz Raber, Professor of Law, Univ. of Innsbruck (May 28, 1991) (noting that the Chief Justice called “this morning” and indicated Mrs. Rehnquist had “been told by her doctors that she will be able to accompany the Chief Justice to Austria for the full length of his visit,” including a trip to Vienna at the end of the St. Mary’s program) (on file with *St. Mary’s Law Journal*).

these developments, and at his request, I asked friends on the University of Innsbruck law faculty to make arrangements with the University of Innsbruck medical faculty to provide necessary care for Mrs. Rehnquist during her visit in cooperation with her doctors in the United States.⁵⁸ Yet until the eve of the program, it appeared that everything was on course,⁵⁹ albeit likely to be more complex than anyone would wish.

I was already in Innsbruck in early July before we received the news that Mrs. Rehnquist's doctors would not allow her to travel. I knew what that meant, and I was not going to ask the Chief Justice to leave his wife at home and make the trip alone. That was never the bargain.

For whatever reason, the Chief Justice said that he would carry through with his plans to teach. I thought that was exceptionally gracious. He had every right to step aside. However, Rehnquist would have known from our correspondence that roughly seventy students from thirty American law schools⁶⁰ had signed up to study under him that summer. He would also have correctly surmised that all of those students had told their families and friends the exciting news about planning to take a course from the Chief Justice, and that each student had organized his or her summer around those plans. The Chief Justice may even have been aware, at the moment that he had to decide whether to teach in Innsbruck without Mrs. Rehnquist or cancel his participation, that many of his prospective students were already in Europe for the purpose of taking his course. Students often traveled in Europe for a week or two before the program began. The Chief Justice did not disappoint those students (or St. Mary's University).

Not surprisingly, Mrs. Rehnquist had played a key role in the Chief Justice's ultimate decision to teach in Innsbruck that first summer. According to Geary Reamey, Rehnquist said that he and

58. See Letter from Fritz Raber, Professor of Law, Univ. of Innsbruck, to author (June 20, 1991) (confirming that arrangements had been made with the Dean of the Medical Faculty) (on file with *St. Mary's Law Journal*).

59. See, e.g., Letter from Vincent R. Johnson, Professor of Law, St. Mary's Univ. Sch. of Law, to Fritz Raber, Professor of Law, Univ. of Innsbruck (June 21, 1991) (indicating that "Chief Justice and Mrs. Rehnquist are pleased to accept" an invitation from the *Landeshauptmann* for dinner on July 10, 1991) (on file with *St. Mary's Law Journal*).

60. See ST. MARY'S ANNUAL REPORT, *supra* note 8, at 2 (recapping highlights from the 1991 Institute on World Legal Problems at Innsbruck).

his wife had discussed whether he should come, and she urged him to travel without her. Rehnquist said that he didn't want to do that, but Mrs. Rehnquist thought it would be good for him. The Chief Justice later confided to Reamey that his wife had been right, and that he realized after traveling to Innsbruck that he had needed a break.

Mrs. Rehnquist died a few months later.⁶¹ The next time I saw the Chief Justice, in January of 1992, he said that his wife's death was a great loss. During his four Innsbruck summers, Rehnquist never spoke more fondly than when he talked about Nan Rehnquist and their happy times together and with their children. Years later, in a tribute to Mrs. Rehnquist (and to the Chief Justice), Rehnquist's colleagues renamed the former "Ladies Dining Room" on the ground floor of the Supreme Court building the "Natalie Cornell Rehnquist Dining Room."⁶²

III. NO ENTOURAGE AND NO SECURITY

There is no judicial-branch equivalent to Air Force One. Unlike American presidents, who travel like modern Caesars,⁶³ and some members of Congress who fly on corporate jets, a chief justice of

61. See Greenhouse, *supra* note 24, at A14 (stating that Natalie Cornell Rehnquist died of cancer in 1991).

62. See Ruth Bader Ginsburg, *Remarks of Ruth Bader Ginsburg, March 11, 2004, CUNY School of Law*, 7 N.Y. CITY L. REV. 221, 231 (2004) (stating that "in the 1997 term, at Justice [Sandra Day] O'Connor's suggestion, [the dining room was] fittingly renamed the Natalie Cornell Rehnquist Dining Room. Even while she was battling what proved to be a fatal cancer, Nan Rehnquist took charge of the renovation of that room"); Ruth Bader Ginsburg, *The Supreme Court: A Place for Women*, 32 SW. U. L. REV. 189, 193 (2003) (discussing the former "Ladies Dining Room").

63. See William Goldschlag, *High Price of First Family's a Concern*, N.Y. DAILY NEWS, Sept. 4, 1999, at 3 (stating that "[a] full presidential entourage easily can reach 200 to 300 people, counting staff, Secret Service and the traveling press corps. Smith likened it to 'a battleship with a real big wake'"); *Heathrow and Teesside handle presidential entourage*, AIRPORTS INTERNATIONAL, Jan. 2004, at 6 (indicating that "Air Force One, carrying President George Bush, used the Royal Suite when it arrived at Heathrow. . . . It then moved on to Teesside International, where it was joined by 12 others, and by six supporting helicopters for the President's departure at the end of his four-day visit to Britain").

the United States⁶⁴ ordinarily travels on regular commercial aircraft,⁶⁵ without an entourage.

During his Innsbruck summers, Chief Justice Rehnquist's flight arrangements were typically handled by Peter T. McLean, Ltd., a New Orleans-based travel agency, which arranged accommodations and transportation for St. Mary's University School of Law and other educational programs operating in Innsbruck. McLean would reserve a first-class seat for Rehnquist, let the airline know that it was transporting the Chief Justice, and request meeting and assistance services at the connecting cities. However, being the head of the federal judicial branch conferred no immunity from travel delays. One year, the Chief Justice arrived in Innsbruck a day late. While sitting on the runway in Washington, D.C., in his first-class seat ready to depart for Austria, Rehnquist had been told that the flight would be cancelled and that he would have to fly the next day. On another trip to Innsbruck, Rehnquist missed his connection in Frankfurt due to a flight delay and had to spend much of the day waiting at that airport in the first-class lounge.

On each of his four trips to Austria, the Chief Justice flew unaccompanied. Although the United States Marshals Service provides protection to the members of the Supreme Court and other federal judges,⁶⁶ it was uncommon for a justice to be accompanied by a

64. Salmon P. Chase "wanted 'his' title changed from merely Chief Justice of the Supreme Court of the United States to the grander title of Chief Justice of the United States." William H. Rehnquist, *The Supreme Court: "The First Hundred Years Were the Hardest,"* 42 *MIAMI L. REV.* 475, 486 (1988). "A Senate Judiciary Committee . . . gave him his much desired new title . . . [and the] Senate bill was agreed to by the House and signed by President Johnson in July 1866." *Id.* at 486-87. The idea, obviously, was for the title to be parallel to "President of the United States." (The president is not "President of the Executive Branch.") Today, the United States Code uses the title "Chief Justice of the Supreme Court" in a couple of places (*see, e.g.*, 2 U.S.C. § 135 (2005) (discussing the purchase of law books), but it refers to the "Chief Justice of the United States" much more frequently (*see, e.g.*, 2 U.S.C. § 362 (2005) (discussing salaries)). In a sense, both titles are correct. One relates to the Chief Justice's role on the Supreme Court, and the other to his role as the chief judicial officer of the entire country. *See generally* Eugene Volokh, *The Chief Justice and Subversion*, 2 *GREEN BAG 2D* 309 (1999) (saying that the term does not matter because the English language is flexible).

65. *See* Editorial, *Lobby Reform Lite*, *N.Y. TIMES*, Mar. 31, 2006, at A18 (discussing "the easy money, quid pro quo culture that now bedevils the Capitol," where members of Congress "shameless[ly] use . . . executive jets so eagerly offered by corporate officials bent on insider access").

66. *See* William H. Rehnquist, *Remarks of the Chief Justice: United States Marshal Service America's Star Exhibit* (Dec. 8, 1988), in *SELECTED SPEECHES*, *supra* note 36, at

marshal, at least before the attacks of September 11, 2001. Today, the situation may be different.⁶⁷ No marshal or other security personnel traveled to Austria with the Chief Justice or any of the other four Supreme Court justices who taught for St. Mary's in Innsbruck in different years.⁶⁸ However, there was at least one significant security-related concern. The year of Rehnquist's first trip to Innsbruck, 1991, was also the year of the Persian Gulf War. My correspondence with the Chief Justice that January reflected uncertainty as to whether the program could be held in Austria at all that year.⁶⁹ The Gulf War dominated the news in February 1991, but fortunately it had run its course by the beginning of March.⁷⁰

On his first trip to Austria, Rehnquist flew to Munich, which was the largest airport in proximity to Innsbruck. Five members of the St. Mary's Innsbruck faculty traveled to Munich the night before the Chief Justice's arrival to welcome him. In 1991, Munich was still using the old airport that had been built to serve the Luftwaffe of the Third Reich during World War II.⁷¹ Reamey and I asked for special permission (rather easily granted by the airport) to enter the baggage claim area to meet the Chief Justice when he picked up his bags. On his three subsequent trips to Austria, the Chief

vol. 7, tab 98, pg. 2 (stating that "the Marshals[] Service is charged not only with insuring the personal safety of lower federal court judges, but with protecting the Justices" of the Supreme Court). Cf. Augustyn, *supra* note 31, at 11 (noting that "to the horror of the Court's Marshal, who was charged with protecting his security," Rehnquist "preferred driving his own car").

67. See May Alice Robbins, *Government Acts on Rising Threats Against Judges*, TEX. LAW., Aug. 21, 2006, at 1 (stating that "[w]ith threats against federal judges . . . on the rise, Congress is focusing on how to provide better protection for the judiciary").

68. The Chief Justice taught in Innsbruck four times (1991, 1994, 1998, and 2000); Justice Antonin Scalia twice (1992 and 2002); Justice Sandra Day O'Connor twice (2001 and 2004); and Justices John Paul Stevens (1993) and Ruth Bader Ginsburg (1995), once each.

69. Letter from Vincent R. Johnson, Professor of Law, St. Mary's Univ. Sch. of Law, to William H. Rehnquist, Chief Justice, U.S. Supreme Court (Jan. 10, 1991) (indicating that "developments in the Middle East could require a change of plans") (on file with *St. Mary's Law Journal*).

70. See Jessica E. Seacor, *Environmental Terrorism: Lessons from the Oil Fires of Kuwait*, 10 AM. U. J. INT'L L. & POL'Y 481, 481 n.1 (1994) (stating that "[t]he Persian Gulf War began on January 16, 1991, and officially ended on March 1, 1991, six weeks later").

71. "After World War II, München-Riem was one of the most modern airports in Europe, and was in continuous use (exterior war damage and all) until it was replaced in about 1990 by Franz-Josef-Strauss-Airport." Nazi ID München-Riem Airport Worker, <http://www.usmbooks.com/riemID.html> (last visited Oct. 1, 2006) (on file with *St. Mary's Law Journal*).

Justice flew into Innsbruck on a commuter plane from Frankfurt. At the small Innsbruck airport, it was possible to glimpse the Chief Justice retrieving his luggage on the baggage carousel through translucent glass doors which opened periodically as persons exited into the arrivals hall. The year that Rehnquist missed his connection in Frankfurt, we watched for him through those doors in vain and eventually determined that he had been stranded for most of the day in Germany.

On the Chief Justice's first trip, we had a two-car caravan that covered the distance from Munich to Innsbruck in about two hours. Air conditioning was then uncommon in European rental cars, and I am not sure whether the smart red Audi that we rented for the Chief Justice (and washed shortly before his arrival) had air. What I remember is that the midday car trip to Innsbruck was hot. My colleague David Dittfurth drove Rehnquist's car, and I rode in the back seat. I thought that positioning Rehnquist in the front passenger seat would give him a bit more room and might be easier on his back, which had given him problems for many years. However, putting the Chief Justice in the front had the unfortunate consequence of placing him in the sun for most of the drive. Rehnquist must have been hot and also sometimes in pain. He did not complain but halfway to Innsbruck asked us to stop along the autobahn for a moment so that he could stand and stretch his back.

The Chief Justice's security was not a large issue. International terrorism had yet to become the challenge that it would be after September 11, 2001, and domestic threats to federal judges were less frequent than they are today.⁷² There was never any threat against the Chief Justice while he was in Innsbruck. The things we did were common sense, and only occasionally a bit unusual. We did not disclose the location of the Chief Justice's accommodations to persons who did not need to know, and when we held receptions honoring the Chief Justice, the signs posted in the lobby of the Hotel Europa Tyrol pointed only toward the "St. Mary's University Reception" and made no reference to the Chief Justice.

In 1991, our friends at the Roman Law Institute of the University of Innsbruck made arrangements for the Chief Justice to follow

72. See Mark Sherman, *Federal Judges Getting More Threats, Graphic Letters Than Ever*, SAN ANTONIO EXPRESS-NEWS, July 28, 2006, at 9A (indicating that "[t]hreats and inappropriate communications have quadrupled over 10 years ago").

his teaching in Innsbruck with three days in Vienna, meeting the presidents and justices of the Austrian Supreme Court and Austrian Constitutional Court, dining with the American ambassador,⁷³ and sightseeing. The Chief Justice planned to fly from Innsbruck to Vienna, which is about 300 miles away. When I spoke by phone with the Chief Justice's secretary in Washington, she expressed concern that someone needed to meet the Chief Justice's plane in Vienna. The easy solution was for Reamey to see the Chief Justice off from the Innsbruck airport, while my colleague Victoria Mather and I drove ahead to Vienna, covering the five-hour trip on the autobahn in time to check out Rehnquist's accommodations at the Intercontinental and meet him when his short flight landed in Vienna.

During other years, the Chief Justice departed from Innsbruck much as he arrived. We accompanied him to the Innsbruck airport, where, again unescorted, he boarded a commuter flight offering only economy-class seats. In 1998 and 2000, Rehnquist returned directly to the United States, but in 1994 he continued on to Bulgaria. Sometime earlier, a Bulgarian jurist had visited the Supreme Court in Washington, D.C., and had extended an invitation for Rehnquist to travel to his country. The Chief Justice accepted that offer.⁷⁴ When Rehnquist returned to the United States, he wrote

73. See ST. MARY'S ANNUAL REPORT, *supra* note 8, at 3 (noting that "[u]pon completion of his teaching in Innsbruck, the Chief Justice traveled to Vienna for a series of visits arranged by St. Mary's, including meetings with the Presidents and Justices of the Austrian Supreme Court and Austrian Constitutional Court, and with the United States Ambassador to Austria"). The Chief Justice was more interested in meeting the jurists than in seeing the facilities. See Letter from William H. Rehnquist, Chief Justice, U.S. Supreme Court, to author (May 30, 1991) (stating "I am somewhat of the school that feels that if you have seen one court, you have seen them all—without meaning to be cynical—so I would not like to spend a great deal of time touring the various courts. . . . The more informal these get-togethers can be, the better I will like it") (on file with *St. Mary's Law Journal*).

74. The jurist who extended the invitation to Rehnquist ended up in something of a fix. That year, Bulgaria advanced further in the World Cup than ever before. Cf. 1994 FIFA World Cup, http://www.soccerhall.org/history/WorldCup_1994.htm (last visited Oct. 1, 2006) (stating that "Bulgaria, who had never won a FIFA World Cup match in 16 previous attempts, were the biggest upsets beating Germany en route to the semi-finals") (on file with *St. Mary's Law Journal*). Shortly before his trip, the Chief Justice told us that he had been informed that, because of the international soccer competition, virtually all of the Bulgarian government leaders might be out of the country when he arrived. However, apparently Rehnquist's visit was a success, for he later wrote that his "trip to Bulgaria worked out very well." Letter from William H. Rehnquist, Chief Justice, U.S. Supreme Court, to author (July 20, 1994) (on file with *St. Mary's Law Journal*).

that he had “not realized quite what a contrast there was between Western Europe and Eastern Europe until that trip.”⁷⁵

IV. SOMETHING LIKE A *PENSION*

Prior to his first journey to Innsbruck, the Chief Justice mentioned that for accommodations he preferred something other than a single hotel room—“something like a *pension*.” I understood this to mean that Rehnquist wanted to stay at a place where it was easy to go in and out and enjoy the fresh air, a place where he would not feel “cooped up.”⁷⁶ I had spent a few summers in Innsbruck, and I was familiar with the locale. Still, it was not obvious to me where the Chief Justice should stay while teaching in Innsbruck.

On the south side of the Innsbruck valley lies the Patscherkofel, a mountain that rises to an elevation of 7,372 feet.⁷⁷ On a plateau about a thousand feet above Innsbruck (elev. 1,880 ft.),⁷⁸ but still at the base of the Patscherkofel, is the town of Igls (pronounced “eagles”) (elev. 2,875 ft.).⁷⁹ Igls is a picturesque cross between an Alpine ski village and a farming community. Coming down the Patscherkofel from a hike to the church at Heiligwasser, I walked through Igls and came upon what struck me as the perfect lodgings for the Chief Justice. It was a place that was once a large country house, but now accommodated guests. Set in a grove of tall trees that gives way to a commanding view of the Alps and surrounded by some of the most beautiful farm land in the world, the small hotel seemed to rarely have more than a few guests. I asked to see several suites and was able to get a good sense of which would be the most comfortable.

75. Letter from William H. Rehnquist, Chief Justice, U.S. Supreme Court, to author (July 20, 1994) (on file with *St. Mary's Law Journal*).

76. A subsequent letter from the Chief Justice confirmed this impression. See Letter from William H. Rehnquist, Chief Justice, U.S. Supreme Court, to author (Feb. 26, 1990) (indicating that the Rehnquists would be interested in “finding a part of a house, or perhaps even a small house, that would have some sort of garden in connection with it . . . in a relatively quiet location”) (on file with *St. Mary's Law Journal*).

77. Innsbruck Stats, <http://www.innsbruck-ski.com/stats.html> (last visited Oct. 1, 2006) (on file with *St. Mary's Law Journal*).

78. Introduction to Innsbruck, <http://www.frommers.com/destinations/innsbruck/0103010001.html> (last visited Oct. 1, 2006) (on file with *St. Mary's Law Journal*).

79. Introduction to Igls, <http://www.frommers.com/destinations/print-narrative.cfm?destID=1880&catID=1880010001> (last visited Oct. 1, 2006) (on file with *St. Mary's Law Journal*).

Not surprisingly, the Chief Justice liked the hotel and stayed there every summer in the same suite, which had a sitting room, bedroom, small hallway, bathroom, powder room, and small balcony. The elderly woman who owned the property came to know the Chief Justice by name, and at the end of each visit to Innsbruck there was a fond exchange of regards between the two.

The hotel was just a short walk, via a small country lane, from the center of Igls, where there are a few shops, a *konditorei* (bakery), hotels, and restaurants. Nothing is more agreeable than a stroll around Igls. “[T]here are a couple of barns in the center of Igls, with milk cows, and an automatic machine allowing people to buy really fresh milk twenty four hours a day.”⁸⁰ When the Chief Justice’s daughter and granddaughters came to Innsbruck, the women, who were in town for only a few days, stayed at a nearby atmospheric bed-and-breakfast that seemed to be straight from the set of Masterpiece Theater.

The drive from Igls to the University of Innsbruck is about five miles. In terms of commuting to work, it must be one of the most beautiful drives in the world. As one starts down the hill from Igls, the panorama quickly opens up, revealing the massive Nordkette range of the Austrian Alps. In the early years, the Chief Justice often drove to and from the University on his own. One time, while driving that route through the tiny town of Vill, Rehnquist noticed a speed limit sign which said “*Radar Überwachung*”⁸¹ and commented to those of us in the car that the message certainly sounded “ominous.”

During his last two summers in Innsbruck, members of the faculty usually drove the Chief Justice back and forth from Igls to Innsbruck. Those duties fell mainly on Geary Reamey, which worked out nicely, since he and Rehnquist got along quite well. Faculty members would often pick up the Chief Justice for dinners and excursions, so that it seemed like we were continually dashing back and forth to Igls, with the constant pressure of never being late to rendezvous with the ever-punctual Chief Justice. On one

80. E-mail from Alan Raphael, Professor of Law, Loyola Univ. Sch. of Law Chicago, to author (Aug. 1, 2006, 15:18 CST) (on file with *St. Mary's Law Journal*).

81. “*Überwachung*” translates as “surveillance.” See NEW ENGLISH-GERMAN DICTIONARY, <http://www.iee.et.tu-dresden.de/cgi-bin/cgiwrap/wernerr/search.sh?string=surveillance&nocase=on&hits=50> (last visited Oct. 2, 2006) (on file with *St. Mary's Law Journal*).

occasion, when we were not precisely on time, Rehnquist was standing on the steps of the hotel waiting, but graciously did not say anything about our being tardy. Logistics and timing were complicated by the fact that during Rehnquist's first two visits we did not have cell phones and were seldom long at any one location in the course of a class day. In the morning, we often had to make detailed plans about where multiple faculty members needed to be at different times in the afternoon and evening, so that they could be picked up by car or otherwise participate in events relating to the visit of the Chief Justice.

In the summer of 2000, the Countess von Trapp, a friend of the president of the Austrian-American Society in Innsbruck, offered the Chief Justice the use of the elegant Palais Trapp, located on the main street in Innsbruck, Maria-Theresien-Strasse.⁸² Rehnquist declined. He said that he preferred the cool nights in Igls at its higher elevation. Igls was simply too perfect to give up, even for a city palace.

V. IN THE CLASSROOM

Each summer in Innsbruck, the Chief Justice taught between six and eight seventy-minute classes as part of a one-credit course. The balance of the sessions was taught by a co-teacher, who also graded the exams (David Dittfurth and Barbara Bader Aldave of St. Mary's University School of Law in 1991 and 1994, respectively, and Linda Smiddy of Vermont Law School in 1998 and 2000). Dittfurth, Aldave, and Smiddy punctuated the Chief Justice's lectures with occasional questions that were intended to focus attention on important issues arising from the assigned materials or otherwise place Rehnquist's lectures in context.

The Chief Justice recognized that his course was a variation on the theme of the Innsbruck program. In preparation for his first trip to Innsbruck, Rehnquist, commenting on his planned class entitled "The Supreme Court in United States History," observed, "I am not sure that this is the precise course one would pick under the heading of 'World Legal Problems,' but I presume the American

82. See Letter from Gerald S. Reamey, Professor of Law, St. Mary's Univ. Sch. of Law, to William H. Rehnquist, Chief Justice, U.S. Supreme Court (Apr. 4, 2000) (informing the Chief Justice of the Countess von Trapp's offer) (on file with *St. Mary's Law Journal*).

constitutional experience does have some relevance for world legal problems today.”⁸³

Students in the class were asked to read Rehnquist's book, *The Supreme Court: How It Was, How It Is*⁸⁴ or, during his last summer in Innsbruck, several chapters in one of his other books, *All the Laws But One: Civil Liberties in War Time*.⁸⁵ In each case, the assigned text was supplemented with photocopied Supreme Court decisions of cases that are discussed in Rehnquist's books.⁸⁶ The number and length of the opinions made for heavy reading, which some students undoubtedly regarded as burdensome. Many of the assigned cases, chosen by the Chief Justice, were decided in the nineteenth century, a time when judicial exposition of the law was often turgid and prolix. In one of my letters to the Chief Justice, I recounted a story, discovered by my then-colleague David Lopez, “about a shipment of the *U.S. Reports* that was captured by Indians in the 1840s.”⁸⁷ I wrote that “[s]ome of the persons were also taken prisoner, and reportedly the Indians tortured the captives by

83. Letter from William H. Rehnquist, Chief Justice, U.S. Supreme Court, to author (Feb. 26, 1990) (on file with *St. Mary's Law Journal*).

84. See REHNQUIST, *THE SUPREME COURT*, *supra* note 24.

85. See REHNQUIST, *ALL THE LAWS*, *supra* note 24.

86. In 1991, the Chief Justice's reading list for the students included: *Marbury v. Madison*, 5 U.S. 137 (1803); *Trustees of Dartmouth Coll. v. Woodward*, 17 U.S. 518 (1819); *Gibbons v. Ogden*, 22 U.S. 1 (1824); *Charles River Bridge v. Warren Bridge*, 36 U.S. 420 (1837); *Cooley v. Bd. of Wardens*, 53 U.S. 299 (1851); *Lochner v. New York*, 198 U.S. 45 (1905); *W. Coast Hotel Co. v. Parish*, 300 U.S. 379 (1937); and *Youngstown Sheet & Tube v. Sawyer*, 343 U.S. 579 (1952). See Letter from William H. Rehnquist, Chief Justice, U.S. Supreme Court, to author (May 1, 1991) (listing the cases the Chief Justice wanted to use on his reading list) (on file with *St. Mary's Law Journal*). By 2000, Rehnquist had added to that reading list: *Ex Parte Milligan*, 71 U.S. 2 (1866); *The Slaughter House Cases*, 83 U.S. 36 (1873); *Munn v. Illinois*, 94 U.S. 113 (1876); *Wabash, St. L. & P. Ry. Co. v. Illinois*, 118 U.S. 557 (1886); *Myers v. United States*, 272 U.S. 52 (1926); *Schenck v. United States*, 249 U.S. 47 (1919); *United States v. Darby*, 312 U.S. 100 (1941); *Cantwell v. Connecticut*, 310 U.S. 296 (1940); *W. Va. Bd. of Educ. v. Barnette*, 319 U.S. 624 (1943); *Ex Parte Quirin*, 317 U.S. 1 (1942); *Hirabayashi v. United States*, 320 U.S. 81 (1943); *Toyosaburo Korematsu v. United States*, 323 U.S. 214 (1944); *Duncan v. Kahanamoku*, 327 U.S. 304 (1946); *Brown v. Bd. of Education*, 347 U.S. 483 (1954); *Gideon v. Wainwright*, 372 U.S. 335 (1963); *Miranda v. Arizona*, 384 U.S. 436 (1966); and *New York Times v. Sullivan*, 376 U.S. 254 (1964). Letter from William H. Rehnquist, Chief Justice, U.S. Supreme Court to Linda O. Smiddy, Professor of Law, Vermont Law Sch. (Apr. 27, 2000) (on file with *St. Mary's Law Journal*).

87. Letter from Vincent R. Johnson, Professor of Law, St. Mary's Univ. Sch. of Law, to William H. Rehnquist, Chief Justice, U.S. Supreme Court (Aug. 28, 1995) (on file with *St. Mary's Law Journal*).

forcing them to read out loud from the *U.S. Reports*. This caused an observer to comment that death would have been preferable.”⁸⁸

Unlike opinions in modern law school texts, which are usually tightly edited by casebook authors, the opinions for Rehnquist’s course were ordinarily copied straight from the official reporters, complete with concurrences and dissents. Nothing was deleted.

Each year, the first day of the course was a moment of high drama. The students were instructed to arrive early and be in position before the Chief Justice entered the classroom. The only entrance to the amphitheater-like room where the course was taught is at the front, and there is no graceful way to enter late. The tiers of seating consisted of rows of bench seats and desk tops spanning the width of the classroom, into which students had to slide. The room was normally packed, since many faculty members and special guests also attended the lectures. Even if there were empty seats in the middle of a row, it was not possible to reach them without forcing several other persons to slide over and reposition themselves and their books.

On the Chief Justice’s first day of teaching each summer, the students welcomed him with a standing ovation, and I made opening remarks noting that in taking time to teach law students, the Chief Justice was carrying on a tradition dating back to Justice Joseph Story who taught at Harvard in the first half of the 1800s.⁸⁹ In 2000, for Rehnquist’s first class, we strung a huge red and white banner across the front of the room which read “Welcome Back Chief!” Oddly, based on the way Rehnquist entered the room and the direction he continued to face, I am uncertain whether he ever saw it. Nevertheless, the banner made a good backdrop for photos that year.

88. *Id.*

89. See generally Ronald D. Rotunda & John E. Nowak, *Joseph Story: A Man for All Seasons*, 1990 J. SUP. CT. HIST.: Y.B. SUP. CT. HIST. SOC’Y 17, 20 (1990) (opining that Story “made Harvard Law School a success”). “Harvard law school is said to have been founded in 1817, but for over a decade it did not amount to much. Then Nathan Dane endowed a professorship of law . . . [and after Story first refused the position] the young Justice finally accepted.” *Id.*; see also The Supreme Court Historical Society, History of the Court, *Timeline of the Justices: Joseph Story, 1812-1845*, http://www.supremecourthistory.org/02_history/subs_timeline/images_associates/014.html (last visited Oct. 1, 2006) (discussing a brief history of Justice Story’s professional achievements) (on file with *St. Mary’s Law Journal*).



The Chief Justice generally lectured, and the classes proceeded along the same lines during each of the four summers. The Chief Justice reviewed his notes in the faculty office before going to the classroom, and in class he was organized and methodical. Rehnquist walked the students through a sequence of important Supreme Court decisions, which he placed in the context of historical developments. The Chief Justice laced his remarks with colorful quotations⁹⁰ and perceptive assessments⁹¹ that sometimes appeared verbatim in his books—phrases that obviously had been considered carefully and etched deep into memory. As a law professor, Rehnquist would have been regarded more as a scholar than as a great classroom teacher. But when passable pedagogical

90. Rehnquist always chuckled when he noted that Justice Samuel Chase had been referred to as “old bacon face” (REHNQUIST, *THE SUPREME COURT*, *supra* note 24, at 104) and that an exasperated John Adams had described Alexander Hamilton as the “bastard brat of a Scotch [peddler]” (JOSEPH J. ELLIS, *PASSIONATE SAGE: THE CHARACTER AND LEGACY OF JOHN ADAMS* 62 (1993)).

91. For example, each time he taught the course, Rehnquist always quoted Charles Evans Hughes’s remarks about Roger Taney, just as he does in his first book. *See* REHNQUIST, *THE SUPREME COURT*, *supra* note 24, at 150 (quoting Hughes as stating that Taney “bore his wounds with the fortitude of an invincible spirit. He was a great Chief Justice”).

skills were coupled with the fact that this teacher was *the* Chief Justice of the United States, the classes were entirely fascinating.

Although Rehnquist occasionally threw out a question to the class and sometimes invited student queries and comments, the classes, on the whole, were in no sense Socratic. There was never a vigorous give-and-take between the Chief Justice and the students.

It typically took the students a few days to loosen up enough to be willing to volunteer questions and answers. On two occasions when the students were just beginning to feel at ease, something happened to snap them back to attention. One year there was a student from another law school who seemed intent on letting people know that he was a young conservative with a deep ideological commitment. The student was also intent on aligning himself with the Chief Justice and enlisting Rehnquist in his ideological cause. That was never a possibility, for the Chief Justice always taught in a manner that was perfectly even-handed and non-ideological. The student asked one question that was politically loaded and seemed inappropriate. Later in the class, Rehnquist paced across the front of the classroom and asked a rhetorical question. The same student, without raising his hand, being called on, or even making eye contact with the Chief Justice, began to answer the question in a manner that seemed ordained to further his personal agenda. Rehnquist was annoyed. He turned around and said simply, "I would prefer to hear from anyone else first." That lightning bolt from Olympus sent a clear message that ideology had no place in the Chief Justice's classroom.

On another occasion, the Chief Justice looked up at the tiered rows of seats that rose sharply before him. A young woman who was munching on an apple caught his attention. The Chief Justice's gaze locked on the woman and he said, "Are you eating something? Would you put that away? Now?" It was an unnerving moment.

I think that most of the students heartily agreed with Rehnquist's handling of the student-ideologue. However, food in American law school classrooms has become so common that I think the apple incident caught them off guard.

Virtually all of the students wanted the Chief Justice to autograph their copies of his book. To make that a bit less burdensome for Rehnquist, we collected about a dozen books each day for the Chief to sign before going to lunch.

The Chief Justice did not linger after class to answer students' questions, as many American professors do. If he had, there would probably have been no stopping point. As a practice, as soon as the class ended, I would get up from my seat at the front of the room and promptly escort the Chief Justice through the cavernous hallways of the main building of the University of Innsbruck to the St. Mary's faculty office. However, the Chief Justice did mingle with the students at a gala reception each year and on other occasions. One group of students from Vermont Law School (VLS) sent the Chief Justice an invitation for lunch. He accepted, and the students enjoyed the occasion immensely. A few years later, another VLS student had lunch with the Chief Justice and me, when most of the faculty members and students were out of town. On a different occasion, three students from Russia and another, who had immigrated from China to Canada, had lunch with the Chief Justice at the Planötzenhof, an informal Gashof at a farm on a dramatic hill just above Innsbruck. That meal must have been as interesting for Rehnquist as it was for the students who hailed from countries where unfettered citizen access to an influential government leader is still unthinkable.

VI. WITH THE FACULTY

Because the Chief Justice was never accompanied on his trips to Innsbruck (except by his daughter and granddaughters for part of his visit in 2000), the faculty spent a good deal of time with Rehnquist. Occasionally, he dined alone at his hotel, where he had half-board privileges. However, often the Chief Justice went to lunch or dinner with the faculty.

At least during his early trips to Innsbruck, the Chief Justice was willing to see and do whatever was available. In one letter, he accepted three invitations: one to attend a concert of early music; another to see the late Stone Age (3300 B.C.) "iceman" that had been discovered in the Tiesenjoch near Innsbruck;⁹² and a third to

92. See Linsey Dyer & Rick Effland, *The Iceman: Medical Knowledge We Never Dreamed of 5,200 Years Ago*, <http://www.mc.maricopa.edu/dept/d10/asb/anthro2003/legacy/iceman/iceman.html> (last visited Oct. 1, 2006) (describing the Iceman) (on file with *St. Mary's Law Journal*). At that time, the Iceman, who was later moved to Italy, was on display at the University of Innsbruck and available "for very limited viewing for about 20 minutes every two weeks." Letter from Vincent R. Johnson, Professor of Law, St. Mary's Univ. Sch. of Law, to William H. Rehnquist, Chief Justice, U.S. Supreme Court (May 4,

have dinner with the new government of the Tyrol.⁹³ That same summer, Rehnquist drove four faculty members on an all-day car trip to the Gross Glockner,⁹⁴ the highest mountain in Austria, during which the group competed at word games that Rehnquist suggested (and at which he was very good).

We were careful to vary the mix of the group from one meal or excursion to the next, thinking that would make Rehnquist's visit more enjoyable. If certain faculty members went to lunch with the Chief Justice, a different group would take him to a concert in the evening. All of the members of the Innsbruck summer faculties lent a hand with entertaining the Chief Justice during his four visits to Austria.

Logistics were more of a challenge than one might expect. We tried to make everything work seamlessly. However, doing that in a foreign country with another language (German) can be difficult. As I know from personal experience, a notice in German about the maintenance schedule of a cable car can easily be misread. When we found the Birgitzkopfl lift unexpectedly closed, we had lunch with Rehnquist at the bottom, not the top, of the mountain.

Often it was necessary to scope out destinations for meals or entertainment. For example, we drove to various mountain guest houses to see if they could be reached with sufficient ease. We concluded that the Kemater Alm,⁹⁵ which is not far to the west of Innsbruck in a valley surrounded by the towering peaks of the Tyrolean Alps, was just too hard to reach: the only access to the valley was a dirt road so long and bumpy that it might aggravate Rehnquist's back. However, St. Magdalena, located in the Halltal, a narrow valley east of Innsbruck, was accessible by a narrow paved road, and the walk from the parking area to that rural retreat was not too strenuous. We took Rehnquist there in 2000, but

1994) (on file with *St. Mary's Law Journal*). Professor Frank Höpfel arranged for Rehnquist and a few faculty members to view the Iceman.

93. See Letter from William H. Rehnquist, Chief Justice, U.S. Supreme Court, to author (May 13, 1994) (confirming what the Chief Justice would like to do on his trip) (on file with *St. Mary's Law Journal*).

94. See A Photo Gallery of the Gross Glockner, http://www.caingram.info/Gross_glockner.htm (last visited Oct. 1, 2006) (exhibiting a photo gallery of the Gross Glockner) (on file with *St. Mary's Law Journal*).

95. See Kemater Alm 1646m, <http://www.kemater-alm.at/historisch.html> (last visited Oct. 2, 2006) (describing the Kemater Alm) (on file with *St. Mary's Law Journal*).

even with reconnaissance, not everything could be anticipated. After we had lunch at St. Magdalena with the Chief Justice and departed for Innsbruck, we found the single-lane road exiting the valley temporarily blocked by a large boulder that had fallen while we were eating. I looked over at the Chief Justice and said, "If that boulder had hit our van and crushed it, we would have made worldwide news." Rehnquist smiled dimly.

On another occasion, Reamey had planned a simple picnic lunch with the Chief Justice in Igl. Somehow the accompanying walk led us improbably to a point where it was necessary for the three of us to scamper up a pine-needle-covered hill on all fours to avoid retracing our steps. Rehnquist did not complain and seemed to have a good time. That was not the only challenging hike for the Chief Justice. On one walk on the Patscherkofl, Reamey decided that rather than repeat our steps on a relatively level hiking trail after lunch at a mountain *hütte*, it would be best to return to the cable car about an hour away by climbing the Zirbenweg, a path that took us over the top of the mountain.

The main building of the University of Innsbruck is only a few blocks from the Altstadt (Old Town), an area full of colorful street life, historic sites, and restaurants serving hearty food. In theory, it was easy for a half-dozen faculty members to take the Chief Justice to lunch in the Altstadt after his class ended around 12:15 p.m. In reality, it could be difficult. Moving any group of more than a couple persons on foot can be slow. This is particularly true with independent-minded faculty members, and I sometimes felt like a field marshal trying to get the group underway. Driving to the Altstadt, rather than walking, was a possibility, but that, too, was problematic. It was necessary to retrieve the car, fight noon-time traffic, and then locate a rare parking spot in an area typically crowded with tourists. Moreover, if five or six persons were going to lunch with Rehnquist, two cars might be required, multiplying the traffic and parking problems.⁹⁶ In addition, Innsbruck restau-

96. I eventually solved this problem by renting an eight-person Chrysler van, into which the visiting justice and a large group of faculty could fit.

rants are very nice, but the service is usually slow,⁹⁷ and it often takes forever to order or pay the bill.⁹⁸

Outings posed similar challenges. The cable car to the top of the Patscherkofel was just a short walk from the Chief Justice's hotel, but the weather at the top of a mountain is different than the weather at the bottom. Justices occasionally have been injured while hiking. As a result of one disastrous mid-winter hike in the United States, William O. Douglas was "carted down the mountain on a horse by moonlight."⁹⁹ Oliver Wendell Homes, in his youth, was badly sunburned and went lame in the Swiss Alps, forcing him to ride a mule to complete part of his journey.¹⁰⁰ My experience in dealing with five justices¹⁰¹ in Innsbruck demonstrated that not all of them wore mountain-ready footgear when they embarked on trails. That was not a problem with the Chief Justice. Still, one had to be prepared. In Austria, I would find myself starting out for a casual walk with Rehnquist on the Panoramaweg near the top of the Patscherkofel with all sorts of equipment: walking sticks,¹⁰²

97. At least until recently, there was no such thing as fast dining in Innsbruck, aside from a few McDonald's restaurants. If you only had an hour to eat dinner, it was not possible. Meals simply took time. This seemed to be partially the result of the Austrian lifestyle (more leisurely, elegant, and quietly sophisticated than its American counterpart) and partially the result of differences in the food-service profession. In America, waiters and waitresses are usually paid a pittance, and so restaurants employ many persons, generally college-age young adults, to wait on tables. In Austria, at least during the 1980s and 1990s, being a waiter or waitress was a significant career which paid good money. As a result, at an Innsbruck restaurant, there might be just one or two well-paid waiters or waitresses to take care of a very large number of tables. Austrian waiters and waitresses were generally older and more professional, and service was considerably slower.

98. The Grünwalderhof in Patsch, near Igls and Innsbruck, is a restaurant housed in a centuries-old hunting lodge of the "Counts of Thurn und Taxis." We dined there many times with the Chief Justice, either inside or outside on the grass lawn, looking toward the glacier at the end of the Stubai Valley. The venue was perfect, but Rehnquist usually liked meals to end promptly, rather than linger on. On several occasions, I had to go to the kitchen and beg for the check—and still it often did not come for a long time.

99. Robert J. Nordhaus, G. Emlen Hall & Anne Elise Rudio, *Revisiting Merrion v. Jicarilla Apache Tribe: Robert Nordhaus and Sovereign Indian Control over Natural Resources on Reservations*, 43 NAT. RESOURCES J. 223, 229 (2003).

100. See Nesbitt, *supra* note 10, at 18; see also David H. Souter, *An Introductory Warning to Hikers*, 14 SUP. CT. HIST. SOC'Y Q. No. 3, 1993, at 4, 4 (noting that Holmes rode "a mule for feet battered too much too soon" while seeking "the grandeur of high places").

101. See *supra* note 47 (discussing the justices who taught at Innsbruck and the topics of their lectures).

102. On one occasion, my interest in Rehnquist's hiking safety caused me to give the Chief Justice a metal walking stick and say firmly, implying no option, "Chief, I want you

sunscreen,¹⁰³ snacks, extra sweatshirts or jackets, umbrellas, bandages, maps, a guidebook (in case the Chief Justice asked a question requiring research), and a small dictionary (because the Chief Justice had numerous queries about the German language).¹⁰⁴

It was all great fun, but Geary Reamey and I spent a lot of time thinking about how to make everything run smoothly. Others did too. When Alan Raphael, a faculty member at Loyola University School of Law in Chicago, decided to invite the Chief Justice on a downhill hike above Igls, several faculty members at the University of Innsbruck and even the Landeshauptmann (governor) of the Tyrol carefully discussed the safety of that plan. Even then, there were unexpected developments. Raphael recalls that:

After walking down the mountain for about 45 minutes, the Chief decided that it was too much for his back so he went back to the cable car station at the top of Patscherkofel to go back down to Igls. We offered to go with him, but he refused.¹⁰⁵

I do not think the Chief Justice was aware of how much time went into such arrangements, but he was always a wonderful guest who appreciated everything that anyone did for him. He was particularly grateful for the assistance that we provided to make the visit of his daughter and granddaughters a success. During that family reunion, we made one excursion to the Axamer Lizum ski area and another to the Stubai Valley where Grandfather Rehnquist took his daughter and granddaughters up to the glacier by cable car.

to use this." Rehnquist complied without complaint, but it soon became obvious that I had failed to completely tighten the parts of the telescoping walking stick. The farther the Chief Justice walked with the stick, the shorter it became. I do not think that he noticed, but I did. Soon, I needed to intervene: "Chief, let me fix that."

103. When we ate lunch outside, the sun could be hot. If there were extra umbrellas available at the restaurant, we often clustered them around the Chief Justice's table to protect him and his companions from the sun.

104. Rehnquist's interest in languages came naturally. His mother was fluent in five languages and "earned money as a free-lance translator for local companies" where they lived in Wisconsin. BOLES, *supra* note 19, at 12.

105. E-mail from Alan Raphael, Assoc. Professor of Law, Loyola Univ. Sch. of Law Chicago, to author (Aug. 1, 2006, 15:18 CST) (on file with *St. Mary's Law Journal*). Raphael noted, "I remember we all discussed how upset the Innsbruck faculty would be to know that the Chief was hiking by himself if they were worried about his hiking with the two of us." *Id.*

At restaurants and other venues, we never touted the fact that we were making arrangements for the highest ranking judge in the United States. Sometimes we implied that we had an important guest, but nothing more. On one occasion, a visitor to the program, who had joined us for lunch, tried to tell a waitress, in German, that Rehnquist was the “head judge” in America. She didn’t quite understand this, but the Chief Justice did. Rehnquist did not want attention drawn to him, and his response suggested that the visitor “knock it off.”

Not mentioning that Rehnquist was the Chief Justice occasionally led to unexpected consequences. In 1999, Geoffrey Watson of Catholic University of America Columbus School of Law taught for St. Mary’s University in Innsbruck. He was accompanied by his family, including his mother-in-law, then-Secretary of State Madeleine Albright. Albright’s visit to Innsbruck had prompted huge headlines in the local press, which cried out on the front page, “*Albright urlaubt im Berg.*”¹⁰⁶ The next year, the hostess at the Grünwalderhof Gasthof in Patsch came over to the table where we were dining with the Chief Justice to explain proudly how the Secretary of State had eaten in her establishment the prior summer, unaware that she was talking to the head of the American federal judiciary. Rehnquist suffered the faux pas with equanimity, taking only the slightest notice.

Faculty members at the University of Innsbruck Roman Law Institute provided wonderful entertainment for the Chief Justice. University Professor Dr. Fritz Raber¹⁰⁷ arranged for the governor of the Tyrol, Landeshauptmann Alois Partl, to host dinners for the Chief Justice on two occasions, each of which Rehnquist seemed to greatly enjoy. University Professor Dr. Frank Höpfel, now an *ad litem* Judge of the United Nations International Criminal Tribunal for the former Yugoslavia, secured the best tickets to extraordinary

106. The translation from German is “Albright vacations in the mountains.”

107. Raber played a key role in the founding of the St. Mary’s law program in Innsbruck. In 1985, he was the young dean of the University of Innsbruck law faculty who received the cold-call “Dear Dean” letter that Reamey and I sent to enquire about the possibility of starting a summer program. Raber met my mother, Ruth Johnson, and me when we traveled to Innsbruck that summer to see the facilities, and he enthusiastically supported the educational cooperation between St. Mary’s University and the University of Innsbruck. In 1995, Raber was awarded an honorary doctorate by St. Mary’s University.

concerts in the Spanische Saal at Schloss Ambras.¹⁰⁸ University Professor Dr. Bernhard Koch and Dr. Constanze Ebner provided extensive guidance and support to the St. Mary's faculty regarding many facets of the Chief Justice's visits.

There were numerous moments of shared humor during Rehnquist's summers in Austria.¹⁰⁹ For example, one day after lunch, the Chief Justice and I were walking in the Altstadt when he spotted a fruit store. The summer delicacies along the sidewalk were gorgeous. Rehnquist said enthusiastically that he was going in to buy some cherries. I did not think that it was necessary for me to monitor the transaction, but somehow I overheard his order and thought, "That's wrong." The Chief Justice had confused kilometers and kilograms. He erroneously thought that just as a kilometer is a lot less than a mile,¹¹⁰ a kilogram¹¹¹ was a lot less than a pound. So he ordered *two* kilograms of cherries. Rehnquist emerged sheepishly from the store laden with a huge bag of cherries. There was nothing to do but laugh and start giving away cherries to the faculty.

During the trip to see the Iceman¹¹² (known as "Oetzi," in tribute to the valley where his remains were found) there was a moment of playful banter. As the small group was walking out of the facility where Oetzi was stored, Reamey commented to the Chief that both he and Oetzi had been on the cover of Time magazine. Rehnquist looked at Reamey with a little smile and said, "Yes, but I've been on the cover twice."

During his first two trips to Innsbruck, Rehnquist would sometimes drive when we went on outings. He was not a slow driver.

108. Schloss Ambras, <http://www.khm.at/ambras/> (last visited Oct. 4, 2006) (on file with *St. Mary's Law Journal*).

109. On one excursion to Garmisch-Partenkirchen, Germany, one of the faculty members stayed in the car but was somehow locked in until the Chief Justice and the others returned from their walk through the Partnach Gorge. It seemed funny to everyone because it was so improbable—no adult gets locked inside a car. However, years later I heard an investigative report about the type of BMW we rented for Rehnquist that summer, which was described as having this bizarre problem.

At lunch, Rehnquist would always enjoy a small beer and a cigarette. Occasionally he would tell a joke. For example: Question: Why did Cleopatra fail in psychotherapy? Answer: Because she was the queen of de-Nile. This particular joke was met with more groans than laughs.

110. A kilometer is 0.6214 miles.

111. A kilogram is 2.2 pounds.

112. Dyer, *supra* note 92.

When we reached the autobahn near Innsbruck one day, the Chief Justice asked about the speed limit. When he was told that it was 130 kph, he immediately accelerated to 150 kph, which some of us found surprising,¹¹³ even though there were other cars going faster. On another short excursion to Italy, Rehnquist drove past the Bressanone exits so quickly it was hard for me to read both the map and the signs. When I suggested that he drive a bit slower, he replied, “just be a bit faster with the directions.” Rehnquist had a BMW rental car one summer but he never got the hang of the window controls, which were on the center console. On a number of occasions, he asked a passenger to “put the window down a bit, please,” as though the task were quite complex. Another time, the Chief Justice thought he was getting amazingly good gas mileage. We determined, with great amusement, that he had been looking at the temperature gauge, not the fuel gauge, and that the car was running on empty.

VII. POLITICAL AND IDEOLOGICAL DIFFERENCES

For more than thirty years, Rehnquist was one of the nation’s leading conservative jurists.¹¹⁴ In contrast, modern American law faculties are typically liberal. The professors who taught for St. Mary’s in Innsbruck during the Rehnquist summers were no exception. There was always an abundance of faculty members from the St. Mary’s home campus and other law schools willing to teach in Austria, a highly desirable summer destination. Professors for the program were chosen based on talent (e.g., mastery of an international or comparative law subject), not politics. Given the mainly liberal pool of American academia from which to draw, it was

113. This was particularly so in light of a comment that Rehnquist made in Vienna. As we were driving through the city, I glibly commented that I would be happier if there were fewer police cars on the road watching for speeders. Rehnquist responded somewhat firmly, and with a seriousness that surprised me, that it was “important for the police to ensure the proper flow of traffic.”

114. See LAURENCE H. TRIBE, *ABORTION: THE CLASH OF ABSOLUTES* 12 (1990) (describing Rehnquist as “a remarkably talented jurist who was at the time of *Roe v. Wade* regarded as clearly the most conservative member of the Supreme Court”); Joe E. Anderson, *The Sixteenth Chief Justice*, 12 *OKLA. CITY U. L. REV.* 733, 760 (1987) (concluding that Rehnquist’s conservative stance was “the result of serious thought rather than shallow prejudice”); John A. Jenkins, *The Partisan*, *N.Y. TIMES*, Mar. 3, 1985, at 6-28, available at 1985 WLNR 617457 (discussing “Rehnquist’s role as the Court’s conservative conscience”).

largely inevitable that there would be more liberals on the Innsbruck summer faculties than moderates, and more moderates than conservatives.

Sometimes the contrast was striking. I recall an excursion to the Hafelekar, a cable car stop high above Innsbruck. There the conservative Rehnquist stood with a contingent of liberal professors, gesturing southward across the lands of the Tyrol, pointing to something on the far horizon. That tableau, posed against the dramatic backdrop, was surreal.

The very substantial divergence between Rehnquist and most of the faculty, in terms of politics and jurisprudence, never caused the slightest tension or difficulties in Innsbruck. All were on their best behavior. The Chief Justice was a gracious guest and the faculty members were thoughtful hosts. Because the conversations never included matters that could come before the Supreme Court, controversial topics were not discussed.

VIII. POLITE CONVERSATION AND ENDLESS QUESTIONS

A conversation with the Chief Justice could leave a person feeling both informed¹¹⁵ and somewhat ignorant. Rehnquist often dealt with people by asking questions. "How high is that mountain?" "When was the village settled?" "Are the Croats Roman Catholic?" "What does *tafelspitz*¹¹⁶ mean?" "Is that a marmot?" On more than one occasion, my dearth of answers left me exhausted. Sometimes those of us taking the Chief Justice to a tourist site studied, in advance, passages from a guidebook or local history so that we could talk authoritatively about such curiosities as Maximilian's tomb,¹¹⁷ a receding glacier,¹¹⁸ or elephants crossing

115. Cf. Chief Justice John G. Roberts, Jr., In Memoriam, *A Tribute to William H. Rehnquist*, 106 COLUM. L. REV. 487, 488 (2006) (stating that "Chief Justice Rehnquist was interested in just about everything, which made him very interesting. It was next to impossible to bring up a subject without hearing something new about it from the Chief").

116. *Tafelspitz* is boiled beef, a common dish on Austrian menus which the Chief Justice sometimes ordered. See <http://www.aboutvienna.org/recipes/tafelspitz.htm> (last visited Oct. 5, 2006) (on file with *St. Mary's Law Journal*).

117. The empty tomb of Emperor Maximilian I stands in Innsbruck's Hofkirche (court church) surrounded by life-size bronzes of the royalty of Europe. See The Memorial Tomb for Maximilian I, <http://www.hofkirche.at/en/grabdenkmal/> (last visited Oct. 5, 2006) (on file with *St. Mary's Law Journal*). Chief Justice Rehnquist had many questions about the history and art related to the tomb, which we toured together.

118. Dyer, *supra* note 92.

the Alps.¹¹⁹ One quickly learned not to raise a subject with the Chief Justice unless prepared to discuss that topic in detail. Extensive friendly cross-examination by Rehnquist was always a possibility.¹²⁰

However, the Chief Justice did not think that every moment of companionship needed to be filled with conversation. A quiet moment was permissible. At one lunch, a visiting faculty member was intent on making sure that the conversation never lagged. After she had left the table, Rehnquist remarked, in perfect good humor and quite correctly, that the professor obviously thought that “if there is a break in the conversation, the meal is a failure.”

In World War II, Rehnquist served in the U.S. Army Air Corps as a weather observer in North Africa.¹²¹ In Innsbruck, he occasionally surveyed the cloud formations, and then confidently predicted the coming weather.¹²² The mountains in western Austria make forecasting the weather very difficult, and the Chief Justice did no better at that task than the Blue Danube radio station.

IX. ILLNESS ABROAD

When the Chief Justice arrived in Innsbruck in 1998, he knew that his back problems were beginning to recur. In an effort to stave off the pain, he participated in the walking tour of the town given for students on the Sunday before classes started. That evening, he also attended the gala opening reception that we hosted at Schloss Ambras, the Habsburg castle in Innsbruck. When Rehnquist sat down at a table with a few students to eat his meal, the

119. For example, in preparing for a brunch excursion with the Chief Justice to Bresanone, Italy, I made sure I knew that Hotel Elefante was “named after an elephant that passed through in 1515 on its way from the court of Suleiman the Magnificent to the court of the Archduke Maximilian” of Austria. Tor Eigeland, *Italy: Snow-fed Lakes, Majestic Valleys*, in NAT’L GEOGRAPHIC SOC’Y, *THE ALPS* 120, 143 (Nat’l Geographic Soc’y 1973).

120. This rule applied in the United States as well as abroad. Shortly before a visit with the Chief Justice in D.C., I made a trip to China, during which I had read John Larner’s *Marco Polo and the Discovery of the World* (1999). Thinking that I might mention that interesting book to Rehnquist, I re-read it en route to Washington. Unfortunately, the Chief Justice showed no interest in Marco Polo, but quizzed me extensively about Leon, Mexico, which I had incidentally mentioned, and about which I was not ready to be tested.

121. See *Rehnquist Timeline*, *supra* note 1.

122. Cf. Roberts, *supra* note 115, at 488 (stating that Rehnquist had “a lifelong interest in the weather. He was able to discuss the climate almost anywhere in the United States as if he had spent many years living in just that spot”).

students were dazed to find that they were in such close company with the Chief Justice and were expected to carry on a conversation.

The next day, the first day of classes went as normal. That evening, Reamey and his daughter, Anne, took the Chief Justice to a vocal music concert at the Wilten Basilica. The wooden pews were punishing, and Rehnquist had to stand from time to time to ease his back. However, it was a delightful concert, and Rehnquist proclaimed it his favorite in Innsbruck. There was no hint that during the night the Chief would pay a price for the good music. Early Tuesday morning, Reamey's cell phone rang. The voice on the line said, "Geary, this is Bill. My back has gone out and I can't get up." Reamey called me and said Rehnquist was in pain and needed help. The Chief Justice lived on one mountain, I lived on another, and Reamey lived in between. As quickly as possible, Reamey and I dashed across the valley and took the Chief Justice to the university medical clinic in Innsbruck. Rehnquist was unable to teach for a couple of days, and a faculty member substituted. When the Chief Justice returned to the classroom later in the week, it was in a wheel chair (which we rented). When Rehnquist was wheeled into the room in front of a packed house of disbelieving students, there was stunned silence. The Chief Justice lectured from the wheel chair, occasionally raising himself and taking a few steps for a short while before returning to the chair.

During the remainder of the Chief Justice's visit that summer, he took physical therapy. Reamey coordinated the logistics of those appointments and drove the Chief Justice to the law school, in time for my student assistant to meet the car at the drive-through and wheel the Chief Justice up a service elevator and through the endless hallways leading to the faculty office and classroom. The Chief Justice said that he had asked his Innsbruck therapist for pain medication, but she declined because she only gave pain medication "to patients who cry."

While recuperating at his hotel, the Chief Justice ran short of reading material. I brought him several books on legal topics, but they were of no interest. He said that was too much like a "busman's holiday"—a vacation where a bus driver takes a trip on a

bus. Fortunately, someone else on the faculty filled the gap with a supply of mystery novels.¹²³

X. GRAND RECEPTIONS

At the end of the Chief Justice's visit each summer, we held a gala reception in his honor attended by students, faculty members, representatives of the University of Innsbruck and the local legal community, and friends of the program. The event took place in the *Barocksaal* ballroom of Hotel Europa Tyrol,¹²⁴ the elegant hotel where we were told that Queen Elizabeth II had stayed when she visited Innsbruck. The *Barocksaal* is a frothy Baroque architectural confection of lemon-yellow and white stucco, tall mirrors, crystal chandeliers, and heavy wood doors. A bomb, it was said, had fallen through the ceiling of the historic ballroom during the Second World War when the Allies were trying to destroy the nearby railway station.¹²⁵ Fortunately, it did not explode.

The *Barocksaal* is grand, but not air-conditioned. In mid-July, a six o'clock reception can be warm—sometimes too warm. Typically, Rehnquist would give the guests time to gather before arriving at 6:30 p.m. and working the crowd for an hour. If he drove to the hotel, someone would take his car at the curb, and a student or faculty member would usher him to the second-floor ballroom. It was always a challenge to keep students from crowding in too closely around the Chief Justice in the warm evening air that rolled in through the windows.

123. The Chief Justice, apparently, had a voracious appetite for mysteries. In November 1999, my colleague Bonita K. Roberts, Washington lawyer John T. Kirch '99, and I dined with Rehnquist at the Morrison-Clark Inn not far from Capitol Hill. The Chief Justice and Roberts discussed mystery novels at length and in great detail.

124. See Hotel Europa Tyrol, <http://www.europatyrol.com/en/index.php> (last visited Oct. 5, 2006) (on file with *St. Mary's Law Journal*). The hotel opened in 1869 and "Bavarian King Ludwig II is reported to have called it 'the most desirable place in Innsbruck to celebrate a festival.'" Fodor's Innsbruck and Tirol, http://www.fodors.com/miniguides/mgresults.cfm?destination=innsbruck@205&cur_section=lod&property_id=413685 (last visited Oct. 5, 2006) (on file with *St. Mary's Law Journal*).

125. See Fodor's Innsbruck and Tirol, http://www.fodors.com/miniguides/mgresults.cfm?destination=innsbruck@205&cur_section=lod&property_id=413685 (last visited Oct. 5, 2006) (describing the Barocksaal as an "architectural masterpiece" built in 1883 by the same gentlemen who built the three Bavarian castles of King Ludwig II) (on file with *St. Mary's Law Journal*).

Naturally, all the students wanted to have their photographs taken with Rehnquist. This was the best opportunity of the summer, as practically everyone was dressed in business or cocktail attire. From my days at the Supreme Court, I knew that Rehnquist was not fond of being photographed, so we always kept photos to a minimum. For the gala receptions, we hired a photographer, Frau Muraier. That eliminated the problem of scores of students flashing cameras at the Chief Justice, but it still presented logistical difficulties. A student had to gain the attention of both the Chief Justice and the photographer, and somehow maneuver into a clear position amidst other students in order to come away with a good shot. This was difficult to do with dozens of students gathering around Rehnquist.

Fortunately, this problem was solved by the Chief Justice's back problems in 1998. Standing for the entire reception would have been difficult for Rehnquist. To make him more comfortable, we placed three chairs in front of a great marble fireplace, with the Chief Justice seated in the middle chair. Two-by-two, the students moved in to chat with the Chief Justice for a few moments. The photographer clicked a photo or two, and then the next pair of students moved in. Virtually everyone ended up with a great picture. Many of the photos show the cane that Rehnquist was then using. The seating arrangement for good photos was so successful that we used it again in 2000, even though the Chief Justice's back was fine that year.

During the Chief Justice's last three trips to Innsbruck, we concluded the reception with an old-fashioned singalong.¹²⁶ A student would volunteer to play the piano, and the Chief Justice would lead the attendees through a selection of songs, using the Chief Justice's compilation of song lyrics, which we had duplicated. The song sheet was essential because many Americans do not sing, and most

126. In 1991, the faculty dinner following the reception for the Chief Justice was held in the Alte Stube, an intimate, rustic wood-paneled room at the Europa Tyrol. At the conclusion of the meal, one of the guests, Edward M. Gaffney, Jr., Dean of Valparaiso University School of Law, suggested a sing-a-long, to which Rehnquist quickly agreed. What followed, *sans* musical accompaniment, was a selection of college fight songs, including the *Notre Dame Victory March* and *On Wisconsin*, and other lively old tunes.

of the songs would have been old even when Rehnquist was a young man.¹²⁷

After the reception, the students usually headed out for a night on the town. The faculty and the Chief Justice recessed to one of the hotel's private dining rooms—the *Alte Stube*, the *Meinhardsaal*, or the *Theresiensalon*—for a celebratory dinner. St. Mary's Dean Barbara Bader Aldave presided over dinners honoring the Chief Justice in 1991 and 1994. Aldave's successor, Dean Bill Piatt, along with his wife and daughter, traveled to Innsbruck in 1998 to meet the Chief Justice. At each concluding dinner, the Chief Justice was formally thanked by the law school and presented with a token gift.¹²⁸ Rehnquist then made remarks expressing his appreciation to St. Mary's University. In 2000, he said, "The fact that this is my fourth trip here gives you some idea . . . that I really enjoy coming to Innsbruck on the St. Mary's program, seeing my faculty friends that I've made before and making new friends here. I have thoroughly enjoyed it."¹²⁹ He added light-heartedly, "Remaining ambulatory, maybe I will be back again to teach."¹³⁰

XI. A GRATEFUL GUEST

During the winter of 1992, soon after the Chief Justice's first trip to Innsbruck, I visited him at the Supreme Court and invited him to teach again in Austria in 1994.¹³¹ Rehnquist responded, "I may

127. My notes indicate that one year we sang (in this order, carefully determined by Rehnquist): *I've Been Working on the Railroad*; *She'll Be Comin' Round the Mountain*; *America the Beautiful*; *You're a Grand Old Flag*; *Take Me Out to the Ball Game*; *In the Shade of the Old Apple Tree*; *Anchors Aweigh*; and *Clementine*. In other years the songs included: *Home on the Range*; *Battle Hymn of the Republic*; *The Marines' Hymn*; and *Five Foot Two*.

128. For example, in 1991, at a dinner "hosted by Dean Aldave, the Chief Justice was presented with two small gifts: a sweat shirt from the University of Innsbruck and an Innsbruck baseball cap, similar to a cap (from Charleston, S.C.) which the Chief Justice wore while hiking in the mountains with members of the faculty." ST. MARY'S ANNUAL REPORT, *supra* note 8, at 3. On another occasion, the Chief Justice wrote that the "woodcut print of the Nordkette" that he was given in 1998 would "remind [him] of [his] more enjoyable times in Innsbruck." Letter from William H. Rehnquist, Chief Justice, U.S. Supreme Court, to author (Oct. 15, 1998) (on file with *St. Mary's Law Journal*).

129. Videotape (Vincent R. Johnson 2000) (on file with *St. Mary's Law Journal*).

130. *Id.*

131. Scheduling a justice to teach abroad typically takes a great deal of advance planning. By the end of Rehnquist's first summer in Innsbruck, St. Mary's had already secured commitments from Justice Antonin Scalia to teach in 1992 and Justice John Paul Stevens to teach in 1993. Thus, the next "opening" was in 1994. The Chief Justice promptly accepted

be retired by then.” I said that it made “no difference.” That was the only time that the Chief Justice mentioned retirement to me. During the next thirteen years, I visited Rehnquist about once annually at the Supreme Court, occasionally presenting him with a small album of photos of his most recent trip to Innsbruck, and generally catching up on the news. Whenever I raised the topic of his “next” journey to Austria, he usually said that it depended on whether he was “still able to teach and to travel,”¹³² and even when he made plans to do so, he often invoked the Latin phrase “*rebus sic stantibus*.”¹³³

Chief Justice William H. Rehnquist died September 3, 2005, at the age of eighty, less than a month short of his eighty-first birthday on October 1.¹³⁴ Rehnquist and his wife, Natalie Cornell, Rehnquist are buried in Arlington National Cemetery, in a lovely area reserved for government leaders and diplomats. The Rehnquist burial site is not far from the Visitors Center, and sits just below the Kennedy graves and the Custis-Lee mansion, in a direct

the verbal invitation. Letter from Vincent R. Johnson, Professor of Law, St. Mary's Univ. Sch. of Law, to William H. Rehnquist, Chief Justice, U.S. Supreme Court (Jan. 28, 1992) (confirming plans for 1994) (on file with *St. Mary's Law Journal*). The invitation to teach in the 1998 program was extended in February 1996 (Letter from Vincent R. Johnson, Professor of Law, St. Mary's Univ. Sch. of Law, to William H. Rehnquist, Chief Justice, U.S. Supreme Court (Feb. 7, 1996) (on file with *St. Mary's Law Journal*)), and accepted later that same month (Letter from William H. Rehnquist, Chief Justice, U.S. Supreme Court, to author (Feb. 28, 1996) (indicating that Rehnquist was not going anywhere in 1996 because he was writing a book, and that he was thinking about teaching in Sienna, Italy, in 1997) (on file with *St. Mary's Law Journal*). The invitation for 2000 was extended to the Chief Justice in September 1998 (Letter from Vincent R. Johnson, Professor of Law, St. Mary's Univ. Sch. of Law, to William H. Rehnquist, Chief Justice, U.S. Supreme Court (Sept. 9, 1998) (on file with *St. Mary's Law Journal*)), but because of the “residual uncertainty about the state of . . . [his] back,” he was unable to give a “tentative assent” until April 1999. Letter from William H. Rehnquist, Chief Justice, U.S. Supreme Court, to author (Apr. 29, 1999) (on file with *St. Mary's Law Journal*).

132. Letter from William H. Rehnquist, Chief Justice, U.S. Supreme Court, to author (Feb. 28, 1996) (on file with *St. Mary's Law Journal*); Letter from William H. Rehnquist, Chief Justice, U.S. Supreme Court, to author (Oct. 19, 1999) (saying he would “be happy to participate in the St. Mary's program at Innsbruck [in 2000] . . . on condition, of course, that I remain ambulatory!”).

133. Letter from William H. Rehnquist, Chief Justice, U.S. Supreme Court, to author (Feb. 28, 1996) (noting that “the international lawyers would say” *rebus sic stantibus* instead of as presently advised) (on file with *St. Mary's Law Journal*). “According to this principle (understood in a broad sense), extraordinary circumstances can lead to the termination of a treaty.” Principles of International Treaty Law, <http://www.walter.gehr.net/rebusstantibus.html> (last visited Oct. 5, 2006) (on file with *St. Mary's Law Journal*).

134. See *Rehnquist Timeline*, *supra* note 1.

line of sight to the Capitol dome. Not far away are the graves of Rehnquist's predecessor, Chief Justice Warren Burger, and Burger's wife. A few steps further away, side-by-side in a row, are the graves of four other Rehnquist colleagues, Justices Harry Blackmun, Thurgood Marshall, Potter Stewart, and William Brennan, Jr., and their wives. Chief Justice Rehnquist's final resting place stands amidst some of the most important jurists in American law and close to the heart of the nation about which he cared so deeply.

During his four summers in Innsbruck, Rehnquist was a very grateful guest. Time and again he expressed his appreciation to St. Mary's University and to those who assisted him during his visits. Spending two weeks with the Chief Justice was always a lesson in civility and good manners. As a guest, traveler, and teacher, he set a high standard for courtesy, thoughtfulness, and professionalism. Indeed, he was excellent company.

